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A
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OF
HINDU LAW,

ON
CONTRACTS AND SUCCESSIONS:

WITH A
COMMENTARY
By JAGANNÁTHA TERCAPANCHÁNANA.

Translated from the Original SANSKRIT,
By H. T. COLEBROOKE, ESQUIRE,
JUDGE OF MIRZAPORE, RESIDENT AT THE COURT OF BERAR,
AND MEMBER OF THE SOCIETY INSTITUTED IN BENGAL FOR INQUIRING INTO
THE HISTORY, ANTIQUITIES, THE ARTS, SCIENCES
AND LITERATURE OF ASIA.

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W A L D U N D I I I

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CONTRACTS AND RECEIPTS

WITH A

COMMENTARY

MR. JACOBUS TH. TERCAPAN CHANANA



BY H. T. J. ...

MONAGHAN

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BOOK II.—*On DEPOSITS, &c.*

CHAP. III.

ON

CONCERNS AMONG PARTNERS.

SECT. I.—*On Partnership in Trade and Adventure.*

I.

NÁREDA :—When traders, or others, jointly carry on business, it is called a Concern among Partners, a title of judicial procedure.

“Jointly,” on a joint stock.

The *Retnácara*.

The word signifies ‘mixed’ or ‘united;’ for the verb *bhú*, compounded with the prefix *sam*, signifies mix. That union is formed by means of a joint stock, or by means of united personal efforts. Thus five traders, uniting their capital, carry on trade by purchase and sale of commodities; or five men, receiving wages, undertake jointly to assist the business of some rich person. The exposition of the *Retnácara* must be understood as illustrative of a general sense. The meaning of the text is subjoined: the expression “and others” comprehends officiating priests receiving a stipend and the like. The union of capital, or exertion, for work, for commerce, for effecting some business, for a sacrifice

or the like, or the same work performed by several persons on a joint stock, or with united labour, is a concern among partners, or is a common exertion by partners; the inflection of one case being substituted for another. Consequently the performance of the same work by two or more persons uniting by means of joint capital and so forth, is a concern or common exertion of partners (*sambhūya samutt'hāna*); *st'hā*, preceded by *samut*, signifies performance of work. Or the relative is employed in the seventh case with the sense of refuge or prop, as in the example "resides with his preceptor:" consequently that agreement or rule, on which business is jointly conducted, is a title of law called Concerns among Partners. The pronoun is used in the masculine gender, as in the text of VYĀSA (Chapter II, v. IV).

With what persons should partnership be contracted; and with what persons should it not be contracted? This question is answered in the subjoined text:

II.

VRĪHASPATI:—Prudent men should not carry on trade, or the like, jointly with persons deficient in capacity or industry, afflicted by disease, ill-fated, or destitute of friend *and home*:

2. Let a man carry on business jointly with persons of high birth, able, diligent and sensible, skilled in coins, in purchase and in sale, honest and persevering.

In all affairs, an incapable man should be excluded. An indolent man, who neglects business, though able to perform it, should in general be excluded: in some instances, however, as in the duties of an officiating priest, the exclusion is not essential. The exception of a person afflicted by a distemper, which disqualifies him for business, is proper, for he is incapable: it is repeated, because the exclusion of a person, in whom disease has made its first appearance, is necessary on some occasions; and a person afflicted by a disease indicating a taint of sin, must be excluded from the performance of sacrifice, though otherwise capable;

ble ; for, even pure persons, jointly performing a religious rite with him, would be dishonoured, since no benefit would arise from it. Outcasts and the like should also be excluded from the performance of a sacrifice or other ceremony ; for the term is illustrative of a general meaning. “ Ill fated ;” not destined to acquire wealth, gain, honour, and the like : it may be known from his horoscope, or from the visible result of his actions : he must be shunned in the concerns of traders and the rest. “ Destitute of friend ” or protector ; such a man is excepted in concerns of trade and the like ; for, should a disposition to knavery or wickedness arise, it would not be repressed : or, “ destitute of home ;” excepted in the apprehension that such a person might abscond with the property.

“ Persons of high birth ;” a person sprung from an honourable family will not be disposed to break his engagements, even though his life be endangered. “ Able ;” skilled in business. “ Diligent ;” attentive to business without considering his own ease : such a person is superior to men in general. “ Sensible ;” capable of contriving expedients when distress occurs : even in the performance of religious rites, the ceremony miscarrying, a person acquainted with the modes of expiation or the like may be required ; other cases are obvious. “ Skilled in coins ;” explained in the *Mitâcsharâ* stamped money, gold *nishcas* and the like, conversant with these, and with silver coins and the rest, and skilled in distinguishing coins which contain copper or the like : in commerce his excellence is obvious ; in other affairs he is also useful. “ Skilled in purchase and in sale ;” in commerce, he who is conversant with purchase and sale, knows the profit to be made : in other instances, it must be explained according to circumstances. “ Honest, or pure ;” is referred to constant, occasional, or voluntary rites, or to concerns in general.

Is not the direct precept superfluous, since partnership is of course permitted with persons different from those excepted ; or the exceptive text superfluous, since persons, different from those with whom partnership is directed, are of course excepted : and thus, is not the repetition superfluous ? No : the exceptive text is necessary to exclude the persons *therein* described ; and the direct precept is necessary to denote, that the persons described *in it* should be sought for. All persons different from those described

in the second verse, are not to be excluded : persons not of high birth, nor yet deficient in capacity, and so forth, may be admitted : but if a person of high birth, and so forth, be found, he should be preferred. This sense is inferible. The text is a precept of ethicks, showing present good and evil : therefore, should the precept be not observed, present evil, as loss, strife, or the like, ensues : but it is no breach of duty ; on the contrary, anyhow to maintain a person afflicted by disease is a duty : and there is no offence in sometimes admitting an indolent person *into partnership*, on an agreement for conducting commerce upon the stock of one by the labour of another. It must be considered, that, if all exclude incapable persons and the rest, it follows that all *partners* must be capable : consequently, a partnership of capable with incapable persons is forbidden. In some instances, a partnership may exist, of persons all deficient in capacity ; for none of them are incapable, compared to each other : but if, among persons of similar rank, one be superior, respect should be shown to him.

III.

NÁREDA :—The junction of stock is the cause of men carrying on business in partnership with a view to gain ; therefore each should contribute his share to the common exertion.

“ Junction of stock ;” union of capital. “ Is the cause ;” is the efficient means. “ Therefore,” that is, for this reason, they should make exertions in proportion to their shares. The text is so expounded by CHANDÉSWARA. Without a capital, or stock, trade cannot be carried on ; therefore, let all contribute wealth, and supply what is required for trade, as the hire of boats, oxen, and other carriage. “ In proportion to their shares ;” that is, let not one furnish the whole, as appears from a text which will be cited.

IV.

NÁREDA :—As the share of a partner, *in the common stock,*

stock, or in work, is equal, or more, or less, in the same proportion shall his charges, loss, and profit, be equal, increased, or diminished.

As the share of each partner in the whole capital is less, more, or equal, so shall be his "loss" on the capital, by the sinking of a boat or the like: the loss shall be settled in proportion to the share of stock.

"Charges;" necessary charges; the king's taxes, and the hire of boats and the like. "Profit;" gain. If trade be again carried on upon the profit added to the original stock, the loss and profit is shared, as above mentioned. Both texts may be applied to agriculture and the like, unless more be expended by one of the partners, of his own authority. In directing that the charges, loss, and so forth, be increased or diminished in proportion to the share of a partner in the common stock, the same is understood of labour; as is clearly expressed in the following text:

V.

VRĪHASPATI:—As his share of the outlay is equal greater, or less, in the same proportion, *unless there be a special agreement*, shall each partner pay charges, perform labour, and receive profit.

"Charges;" loss by the sinking of a boat or the like; and disbursement for the payment of the king's taxes, and so forth. All this supposes that there is no special agreement.

VI.

YĀJNYAWALCYA:—In a partnership among traders who carry on business with a view to gain, let the profit and loss be distributed to each according to his share in the stock, or according to special agreement.

If there be no special agreement, the distribution must be regulated by the shares in the stock ; if there be a special agreement concerning profit and loss, let the profit and loss be distributed accordingly. *The Chintāmeni.*

Profit and loss are mentioned as instances merely ; for the reason of the law is equally applicable to labour. The *Retnācara* concurs in the same exposition, but reads, in the fourth measure of the verse, *yat'hā vā samvidā crītau*, instead of *yat'hā vā samudābrītam* : it is expounded ' or as settled by a *special* agreement.' According to this opinion, more is allowed, under a special agreement, to one of the partners, from a motive of respect or affection : but, extorted by force, such an agreement is null. (Chap. II. V. x.)

If there be a special agreement in respect of labour, it is expressly declared that the contribution shall be unequal.

VII.

NĀREDA :—Let the partners, unless bound by a *previous* agreement, duly contribute to the stock, to the charges of living and of trade, to the deductions and weights, and the care of valuable articles.

“ Stock ;” store for purchase and sale. “ Charges of living ;” way charges. “ Charges of trade ;” hire. “ Deductions ” made, for particular purposes, from the joint property. “ Load ;” weights. “ Valuable articles ;” fanders wood and the like. “ Duly,” as is proper. “ Unless bound by agreement ;” not being bound, no special agreement having been previously made.

The Retnācara.

“ Way charges :” if one of four partners go to a foreign country to buy or sell, let all the partners defray his way-charges, and similarly defray the charges of his maintenance while living abroad ; for the reason of the law is equally applicable ; and it is equally intended by the text, since the word hire signifies food in general. “ Charges of trade, or *hire* ;” the term is illustrative of a general meaning, comprehending the king's taxes and the like,

like. "Deductions" may occur where an excess has been given by mistake, and in other cases: there is no objection to the explanation of this term as intending debt: if it happen that a purchase, or the king's taxes, cannot be supplied from the stock already accumulated, it being then necessary to contract a debt, the debt contracted by the partner sent abroad, who, though not expressly authorized, has not been restricted from contracting debts, must be paid by all the partners. But this is not mentioned in the *Retnācara*. "Load," explained weight, intends the weights used in commerce and so forth. Let them provide and defray those several articles. By the expression 'and so forth,' gift and the like is comprehended in the gloss. "As is proper;" in proportion to their shares. "No special agreement having been previously made;" an agreement for exemption from labour not having been made at the time when all united in partnership; not being bound by such an agreement.

Others explain the text, "Let all apportion the vessels, the accumulation, the charges, the expense of transport and of custody, and the durable shares." If any misfortune happen, it shall not fall on one of the partners. But, if there be an agreement for proportioning the labour, all shall not perform all the work, but they shall furnish labour respectively, according to agreement: as is intimated by the concluding part of the text. Or, if there be an agreement, that one of the partners shall contribute no labour, it must be so settled.

Both opinions should be admitted; for they are proper: and what is consistent with common sense, though not mentioned in either exposition, must necessarily be understood as comprehended in the sense of the text.

VIII.

VYĀSA:—Never deceiving each other, present or absent, let them make sales and purchases according to the value of the various articles.

Here the privative *a* must be interposed; "not deceiving:" that is, let them transact business, never deceiving each other.

The *Vivāda Chintāmeni*.

Deceit in the presence of the partners consists in appropriating things under false pretences, or in not making due exertions. Thus, one of the partners takes a thing and says, in the presence of the rest, "I take my private property which was placed here;" or he mistates the price paid for a commodity. Deceit in respect to labour may be thus: when sent for any business, he says, "this business is not to be performed by me;" or says, "I have performed much labour, let this business be done by you." Deceit in the absence of the partners is obvious. Let them proceed according to the profit between the purchase and sale of the various articles, as cloves, nutmegs, pease, wheat, cotton, grass and the like.

IX.

VRĪHASPATI:—They are declared to be competent arbitrators and witnesses for each other, in doubtful cases of deceit, provided they bear no enmity to either party.

"They;" the partners.

The *Retnācara*.

If one of eight partners, being accused of deceit, does not charge a stranger with the fault, but simply denies the fraud, those partners, who are neither accusers nor accused, may officiate as arbitrators to decide on the fraud alleged; and they may be witnesses. An exception is mentioned, "provided they bear no enmity to either party," to the accused or accuser. The meaning is, that, if there be any dispute concerning trade in partnership, the arbitration of the partners may in some instances be admitted; but the evidence or arbitration of strangers or king's officers is not forbidden.

Others read the latter part of the text, "let them not, from an impulse of hatred, expel a partner on pretence of fraud*." Though naturally averse from him, yet unable from modesty or other motive at first to refuse him, having thus, from false shame or other cause, once admitted a person not agreeable to them, should they,

* The various reading is on the fourth measure: *na d'wīshyur d'wēśbasanyutāb*, instead of *yé na d'wid'wēśbasanyutāb*,

they, recalling their aversion, attempt to expel him on a false accusation, let the king prevent them.

How then shall he be cleared? In the mode mentioned by VRĪHASPATI :

X.

VRĪHASPATI :—Should one of the partners be justly suspected of fraud, in buying, felling, *and the like*, he may be cleared by ordeal: such is the rule in all controversies.

This text propounds the mode of trial. “Justly suspected of fraud ;” thought guilty of fraud, but with some doubt ; for, if it be certain, he cannot be cleared by ordeal. If he be not cleared by popular proof, nor be convicted of fraud, he may clear himself by ordeal : it is not ordained in the first instance ; for a text directs, “on failure of these several proofs, one of the several ordeals is ordained” (Chapter II). Sufficient cause of suspicion must be shown to ground *this* procedure upon, not merely that he has been much employed in the transactions of the joint trade : this observation is grounded on the opinion of RAGHUNANDANA, in the *Dāyabhāga tatva* ; “otherwise partition of heritage could never be made without ordeal, for knavery may be always apprehended.”

If one of the partners, skilful in business, have with much labour transacted sales and purchases at home and abroad ; and, when partition is made, if he be suspected of fraud ; let him not in the first instance undertake ordeal, but say, “examine the sales and purchases.” Then, should his story be inconsistent, or should he allege a delivery to a person to whom it is not proved that any thing was delivered ; in this, and similar instances, suspicion justly arising, a judicial procedure is proper. But otherwise, his conscience is his witness.

Ordeal may be required in a case of fraud in regard to labour. Thus, one of several partners, bound by a previous agreement, purchases commodities in another country ; another brings those commodities home ; a third sells them at home : in such a concern, goods, which were brought by water on a boat, being destroyed

stroyed by a storm, the partners, on hearing of it, say, "they were lost by thy neglect;" the other replies, "I did not neglect them:" in this, and similar cases, *ordeal is directed*. "Such is the rule in all controversies:" even in other cases, in regard to loans and so forth, if there be suspicion, the party must be cleared by ordeal or other evidence. Evidence in general is intended. So the *Retnâcara* and *Chintâmeni*.

XI.

VRĪHASPATI:—When the principal stock or the profits are diminished, in the case of partnership, by the act of GOD or of the king, that loss must be borne by all the partners in proportion to their shares.

When the accused is cleared by ordeal or other evidence; and it is proved that the goods were lost, without any neglect on his part, by the act of GOD or of the king; that loss must be borne by all the partners in proportion to their original shares. He repeats what he has before said (V); or the word may be there understood as intending charges only (such as payment of the king's taxes and the like), not loss: but the same rule is extended to a loss which happens without negligence; that is, a loss which happens notwithstanding the utmost exertions made to prevent it; or a loss which occurs when the partner, through inadvertence, placed the goods in a perilous situation, without suspecting the danger. According to the *Retnâcara*, the first loss or diminution mentioned in the text intends loss of capital; the second, loss of profit: and MISRA gives the same exposition. If the loss be total, it must be proportionally borne by all the partners; if profit only be lost, shall it be borne by that partner who had charge of the concern when the loss happened? To remove this doubt, the text expresses, "when the profits are diminished, &c." If profit be lost with capital, it is proper, on the ground of favour, that the partners should share the loss of profit; but shall the loss of capital be borne by him who managed the concern when the loss happened? To remove this doubt, the text expresses, "when
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the principal stock is diminished, &c." The same decision should be given when the profits are diminished by waiting for a rise or fall of price. An exception is mentioned in the following text :

XII.

VRĪHASPATI :—But, if one partner, acting against or without the assent of the others, by his negligence injures the common property, he alone must indemnify all the partners.

"Without the assent of the others," unknown *to them* : so the *Chintāmeni*. It may signify 'not sent to bring goods from a country where they are cheap.' It does not intend a case where, having gone to that country on such a mission, the partner, when returning thence, by accident, without the knowledge of the rest, meets with a dangerous place ; else a partner could never go to a foreign country, where he must act without directions from all the partners, since they would not be present.

"Against the assent of the others ;" forbidden to go at that time. For example : one partner wishes to travel by water carriage to a foreign country ; the others consent, but say, "wait this day, incursions are expected from the army of a foreign prince." The person employed, nevertheless, goes that very day ; and the goods are plundered by the army of a foreign prince. In that case a fault is imputed to the partner acting against the assent of the others.

In the case supposed, if the goods be not plundered by the forces of a foreign prince, but the boat happen to sink in a storm, what shall ensue ? It cannot be argued, that the loss must be made good by him, during whose management it occurs, because the goods are lost by a person acting against the assent of the others : the motive of forbiddance being different, the prohibition is nothing to the purpose. Not being wholly dependent on their commands, shall he not follow the road of gain, although a motive of objection be set forth, if he be able to counteract the cause of objection ? Nor should it be argued, that, were it so, the loss must be borne by all. If he had not gone that very day, the boat would not have been lost.

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To the question thus proposed, the answer is, the loss of the boat, happening in a storm, is accidental and unforeseen : it is the act of GOD. But if he quit the route to elude the enemy, and the boat be wrecked in consequence, he must make good the loss. Other cases must be determined on the same principle.

“ By his negligence,” is a general expression comprehending the act of GOD or of the king. It appears from this expression, that a loss, happening by the negligence of a partner not acting against or without the assent of the others, must be borne by all the partners.

XIII.

NÁREDA :—And what is lost by the negligence of one *partner* acting against or without the consent of all the partners, must be made good *by him*.

The import is the same as in the preceding text. The particle is used in the sense of “ and.”

XIV.

YÁJNYAWALCYA :—If one partner does what the others forbid or disapprove, or if he be negligent *in doing what they allow*, and the *common* property be injured, he shall make it good ; but he who preserves it from *robbers* or *other* misfortune, shall receive a tenth part of it *as his reward*.

The property being endangered by the act of GOD or the king without any fault on his part, if one partner preserve it by his own exertions, he shall receive a tenth part. For example : a fire accidentally happening where the whole stock is hoarded, if one partner extinguish the fire by his own exertions, or be able to save the goods, he shall receive a tenth part as his reward. So, if he recover goods sunk by a storm in the middle of the river on their way from a foreign country, throwing himself into the water at the risk of his life, and dragging them on shore, he shall
receive

receive a tenth part. Even in the case before mentioned, if one partner, going to another province against the assent of the others, save the goods from the army of a foreign prince, by his own exertions, by insinuation, or by artifice, and gain considerable profit, it is reasonable that he should receive a tenth part.

A tenth part of what? It is answered, a tenth part of all the goods saved. If the partner who goes even against the assent of the others, save the stock by eluding the enemy, or by other means, *but do not gain considerable profit**, shall he receive a tenth part of the stock *saved*? Since the danger arose from his own fault, he is not entitled to a tenth part. But if the boat be lost by the act of GOD, and he save any goods; in that case he shall receive a tenth part of those goods, and all the partners shall divide the remainder; as ordained by the following text:

XV.

VRĪHASPATI:—If a single partner, when danger is apprehended from the act of GOD or of the king, preserve the common stock by his own exertion, a tenth part of it shall be given to him, and all shall have their respective shares of the remainder.

“Their respective shares,” in proportion to their shares in the original stock: and the person who saved the common stock shall have his share; the tenth part is as it were his reward.

XVI.

NĀREDA:—He who preserves, by his own effort, the goods of the partnership, when a calamity arises from the act of GOD, from robbers, from the king, or from fire, is entitled by law to a tenth part of them.

When danger only arises.

The *Retnūcara*.

XVII.

* I insert this reservation, to reconcile this and the preceding paragraph.

XVII.

CÁTYÁYANA :—To him who shall preserve goods from robbers, water, or fire, a tenth part of their value shall be given : this is the rule in all sorts of property.

“ Preserve ;” save. *The Retnácara.*

Some infer, from the expression “ all sorts of property,” that if the several property of any person in danger of loss be saved by another, even in that case whoever saved it shall have a tenth part of the property saved. That is not the opinion of **CHANDÉSWARA** and **MISRA** ; for this text appertains to the title of Concerns among Partners. Nor should it be argued, that if a stranger preserve any property belonging to joint traders from danger of loss, he shall receive a tenth part of it ; but **CHANDÉSWARA** and others deny the reward of a tenth part in case of a salvage of property belonging to a single owner, as is expressly declared by them in these words : ‘ some hold, that the rule is ‘ the same in all sorts of property, even though it belong to a ‘ single owner ; but that is not admissible, because it is inconsistent with the title *under which the text is placed.*’ This again is opposed, on the same objection, that it is inconsistent with the subject ; for the subject proposed is the rule of decision when one of the partners preserves the goods from robbers and the like, not when they are saved by a stranger : and it has not been so declared in the *Cámadhēnu*, nor by **HELÁYUDHA**, who hold that this has the same import with the text of **NÁREDA**. **CHANDÉSWARA** and others hold, that the tenth part of the property saved shall not be received, in the case of property belonging to a single owner, which is preserved from robbers and the like. Consequently they concur with the *Cámadhēnu* and with **HELÁYUDHA**.

What then is meant by “ all sorts of property ?” The profits and the principal stock. Or it may be thus explained ; there is not, in this case, any such distinction as that which is declared under the title of Loans and Payment, in regard to the highest interest on gold, grain, wool, fruits, flowers, and so forth : but a tenth part of any property saved shall be received, whether it be gold,

gold, precious stones, pearls, pepper, quicksilver, grain, wool, grafs or the like. This is denoted by the very expreffion ‘all forts of property :’ thus the epithet “all” denies any other rule in regard to any fort of property, no diftinction being any-where fpecified between joint or feveral property : but it muft not be objected, that, if fuch be the cafe, whence is an exception deduced in regard to the property of a fingle owner? It is deduced from the fubject : confequently the meaning is, “this is the rule in all forts of property, whether gold or any other commodity, belonging to perfons engaged in partnership.”

If any man, by his own labour, fave the property of partners, or of any other perfon, in danger of lofs by water, fire, robbers or the like, what fhall he receive? Although it be not ordained by the law, fomething fhould be given to him as a token of refpect, or as a recompense, on the authority of the law concerning other cafes, or on the induction of common fenfe.

It is inferred, that, among ten partners, if three join in faving any property which is in danger of being loft in a river, or of being deftroyed by fire, thofe three perfons fhall fhare one-tenth part only, which fhould be diftributed in proportion to their refpective exertions.

If one partner oppofed the attempt of faving *the goods*, another remained filent, and the third approved the attempt, what is the law in this cafe? He who oppofed it fhall have no fhare of *the gain* on thofe goods : the perfon who remained filent fhall have the fhare *regularly* allotted to him : and fo fhall he who affented to the attempt ; but he fhall receive fomething more than the other, as is declared by APASTAMBA in refpect of thofe who ‘caufe an act to be performed, who affent to it, and who actually perform it :

“They all fhare the retribution in heaven, or hell ; but there is a difference in the reward of him with whom the act originates.”

Who fhall receive the fhare of him who oppofed the attempt? Not all the others, for there is no law to give a title to the perfon who remained filent ; not the falvers only, for that is inconfiftent with common fenfe ; thus, if a ftranger fave the property of another,

ther, which is in danger of loss by water or the like, he is not entitled to the whole ; and in this case, how can the preserver be entitled to the whole, since he is a stranger in regard to the property of another ? the law admits not a distinct kind of ownership founded on union of stock.

The question proposed is thus answered : the person who opposed the attempt shall receive his proportion of the capital stock ; therefore, the capital stock shall be divided among all the partners, after giving a tenth part of it to the salvors : but the profits, after paying a tenth part to the salvor, shall be divided in proportion to their shares among the other partners, solely excluding the person who opposed the attempt ; for it will be shown, that even a man of crooked ways forfeits the profit only.

Is this a man of crooked ways ? or does he not rather intend kindness ? The man of crooked ways opposes another, lest a share of the labour should fall on himself ; it is proper he should lose his share of the profit : but this man opposes the attempt to preserve his partner's life, as he would his own ; he opposes it, to save him from pain, thinking the fire irresistible : why should he lose his share of the profit ? When he opposed the attempt, even then he forfeited his property ; the profit belongs to him who, regardless of his partner's objections, and little valuing the preservation of his own life, plunges into water, or rushes into fire, to save the property ; but the partners, who assented, or remained silent, shall have a share, for they had not abandoned the property : it is however proper that something be given to the partner who opposed the attempt.

Has he not forfeited even his principal by abandonment ? That should not be asserted, for he has not absolutely abandoned it. When the goods were carried away by water, his reflections are : " What can be done ? They are lost irrecoverably ! " He does not abandon them by a declaration that he has no further interest in them. Shall his condition be the same with that of a man of crooked ways ; for even that man loses the profit only ? It is not a satisfactory opinion which deems that admissible ; for it is inconsistent with reason that the condition of a man who intends a kindness, but is unable to traverse the water, though otherwise qualified for business, should be the same with that of a man of crooked ways. It must not be argued, that
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even his principal should not be given to the man of crooked ways. There is no ordinance to that effect; for YAJNYAWALCYA would have said, "without stock," instead of saying, "without profit," (XVIII). Nor should it be affirmed that this law must be understood of the case when toil is omitted through indolence; but, in the case supposed, even the principal is forfeited. It is not fit that the property of one, saved by another, be retained by the saviour, without the owner's assent declared in this form; "take the property you have saved." Neither should it be argued, that all profit is forfeited by obliquity of conduct; for it is inconsistent with common sense that a man who had previously done nothing perverse or dishonest, and had acquired profit by his own labour, should now lose all profit on account of his conduct in a moment of great danger. No forfeiture is incurred by opposing the attempt, from a motive of affection or the like, without fraud: but if it be opposed from a perverse motive, the profit is forfeited: the saviour shall receive a tenth of the principal and profit.

If a partner be convicted of fraud, the loss must be made good by him: this is shown by the direction for distributing shares to all, if honest. His expulsion is *also* directed.

XVIII.

YAJNYAWALCYA: — A man of crooked ways let the other partners expel without profit; and let a partner unable to act, appoint another man to act for him*.

Let the partners expel a man of crooked ways, (that is, a fraudulent partner,) without profit, giving him his principal stock only: but let him, who, though not fraudulent, is unable to act, appoint for his substitute another man able to act.

The *Retnâcara*.

MISRA delivers the same exposition.

A fraudulent partner is of two descriptions; one who is averse from the performance of work, and one who embezzles property.

erty. In regard to performance of work, a distinction must be admitted, as suggested by common sense: the fraudulent partner forfeits the profit on that part in regard to which he offends; not the whole profit. A partner having bought goods without fraud, sells them; and afterwards adopts fraudulent ways in his sales and purchases, but has committed no fraud in regard to the first goods: in that case he shall have a share of the profit; but he forfeits the profit on that part concerning which the fraud was committed. In all cases, however, the fraudulent partner shall be expelled; for fraud is sufficient cause of expulsion.

If he perform the labour directed in regard to sales and purchases, but neglect the preservation of the goods, what shall follow? If there be no specifick agreement, and the share of the business regarding purchase and sale be performed by the directions of the other associates, then, should he neglect the preservation of the goods, he shall be deprived of his share in the profit; otherwise, the text would be unmeaning: and it is not restricted to neglect of business from the first day of the partnership. But if he say, "I have skill in all other affairs, but not in the preservation of goods," there is no perverseness in him: therefore he may partake of the profit, by their favour. Or the maxim, "let a partner unable to act appoint another man to act for him," may be applicable to this case; therefore, let him engage some other person to preserve the goods. On this point a distinction is mentioned.

XIX.

NÁREDA:—Should one partner be unable to act, his heir shall undertake the work; or, if there be no heir, another partner who is willing and able to act; if there be no such person, all the partners.

"Disability;" calamity, or incompetence: meaning calamity from a moral cause. "Heir;" the son, and so forth. "If there be no heir;" if the heir be unfit or unable, or if there be no heir present, another partner, who is able to act for both, shall undertake the preservation of the stock; if there be no such person, all

all the partners; for partners must be necessarily understood, since it would be improper to understand "all" as intending the world at large; and, from the context, partner must be understood even in the middle of the text: thus, "heir" must be understood of a partner; and the term comprehends kinsmen. If one partner be disabled, he among the partners who is heir to the disabled partner should undertake his work; if he refuse it, let the king *formally* appoint him; no other can act for him, if there be an heir capable of acting. But if there be no heir, or if he be incapable of acting for both, let another, who is able to act for both, undertake the work. Thus "able" is pertinent, otherwise it would be unmeaning; since a capable person may be unable to act as a substitute. The appointment of the substitute is referred to the king, because there is no other person to whom it could be referred.

If there be no such capable person, let all the partners preserve the goods. The texts of YÁJNYAWALCYA and others (XIV &c.) being applicable to the present case, the saviour or saviours shall have a tenth part of the property saved. This is inferred by CHANDESWARA.

If partners be understood in this text, another person may not be employed at the choice of the principal, on whom it is incumbent to preserve the goods. This *objection* is not consistent with reason, for *even* the heir may not be employed unless he be included in the partnership. Nor should it be argued, that the same rule may extend to a separated kinsman, if there be no undivided brethren capable of acting; for such an extension of the rule has no foundation in any ordinance, nor in the reason of the law. Nor should it be argued, that the rule is grounded on the reason of the law; because otherwise the word "able," in the text of NÁREDA, would be unmeaning: it may be taken as a descriptive epithet *nearly superfluous*. If another person may not be employed at the choice of the principal; then, of course, the partners should preserve the goods, and receive a tenth part as their reward.

MISRA, thinking the application obvious, has not expressly said, that the heir, and other persons mentioned in the text, are included in the partnership. It should not be objected, that

MISRA expounds the text, "should one *partner* die, &c.;" how then should another person be employed at his choice? MISRA therefore could not have contemplated such a construction. Still it is difficult to disprove the supposed disqualification of his heir not included among the partners. We therefore hold it proper, in this case, to follow the exposition of CHANDESWARA, "If one partner be unable to act, let his heir undertake *the preservation of the stock, &c.*" and in this case another person cannot be employed at his choice: but if there be no son or *near* heir, a more distant heir, included among the partners, should undertake it; next, another *partner* able to act; or if there be no such person, all the associates. Such is the successive order. The son of a disabled partner being properly under his authority, it is not necessary that another heir should be employed, if a son be forthcoming; but, on failure of a son, he should be employed; otherwise the special mention of "heir" in the text would be an unmeaning repetition. It should not be argued, that, if another act *for a disabled partner*, although an heir exist, the text is propounded to show that the heir, complaining before the king, may prevent it. There is no argument for selecting this limited construction. If the heir refuse the undertaking, and another partner accept it, then his employment is not disputed. In fact the heir ought to perform the work, because such is the actual course: for, on the death of the father, his obligations devolve on the son; but, in his default, a substitute should be appointed. Therefore the *Retnâcara* shows, that the heir shall receive a tenth part of property saved by him. If the person be selected at the choice of the principal, he shall receive a tenth part, or other reward as may be agreed on between them: but for others, the reward is a tenth part of the property saved; for it is ordained by Sages treating of the same subject. A tenth part of what? Shall it be a tenth part of the principal stock and profits, or of the profits only? On the first supposition, in what does the situation of the partner differ from the situation of one who forfeits his share of profit, since the gain does not always exceed a tenth part of the principal? On the second supposition, he, who saves the stock only, would have no reward. Both objections are wrong: for the situation of the partner does differ when

when the gain may exceed a tenth part; and if the principal stock only be preserved, the reward *paid* may be replaced by a share of future profit. But the rule of decision is this: a tenth part of the property saved, both the principal stock and the profit *being preserved*, shall be received by the preserver of it; and this rule concerns property saved by exertion, not by the act of God, while the partner merely talked of saving it.

Him who embezzles the joint stock let the partners expel without profit, after taking back the property embezzled. Loss of profit shall be his punishment; for no distinction is mentioned, in regard to fraudulent partners, in the text of YÁJNYAWALCYA (XVIII).

If any trader die, what shall be done in that case? This question is answered in the following text:

XX.

NÁREDA:—If any travelling merchant, coming from a foreign country, should die, the king shall keep his stock until his heir appear.

2. Should he have no kinsman in a direct line, let the king deliver it to persons allied to him, or to collateral kinsmen; and if no such heir appear, let him keep it well guarded for ten years.
3. Such property without an owner, and without a claimant as heir to the deceased, let the king, when it has been kept ten years, appropriate to his own use: thus justice will not be violated.

MISRA thus interprets the texts; if one of several partners die, it is directed by the preceding text (XIX), that his heir, another partner, or all the partners, shall preserve the stock; but if all the partners die, the rule for that case is delivered in these texts (XX). According to his opinion, if one partner die, there is no reference to the king; but his partners shall preserve his stock, and deliver it, as the king is directed to do, to his heirs, near kinsmen, or collaterals: on failure of these, let it be delivered to the king, like an *escheated* inheritance.

But, according to CHANDÉSWARA, the first text (XIX) describes the persons who should preserve the stock of a living partner when disabled: and the rule, in case of death, is declared in the subsequent text (XX). Consequently, if one of the traders die, notice should be given to the king; and the king shall preserve his stock, and afterwards deliver it to his heirs when they appear, retaining a twentieth or other portion of it (XXII) as a recompense for his care: but, on failure of heirs, he may appropriate the whole to his own use. A distinction will be mentioned in explaining another text. This is *also* to be understood of a case where all the traders are deceased.

Others hold, that, if any trader be unable to act, his son, as heir, shall perform his work; in default of the heir, any partner, or other person, appointed by the principal, shall perform it, and receive such compensation as may be stipulated; but if such person be not able to act, all the partners. A tenth part being directed by Sages for a case of salvage only, if the whole work be done, the recompense should be the half, or other proportion of the profit, according to circumstances. The expression "shall undertake it" (XIX), is not understood merely of saving the stock, but of business concerning the stock: and this has been declared by YÁJNYAWALCYA, "let a partner unable to act appoint another man to act for him;" it is not positively required that the substitute shall be one of the partners. But NAREDA expressly says "another," *that he may be employed or not according to the possibility or impossibility of appointing a kinsman*, and without any further meaning; for it is troublesome to establish a distinct regal duty, while the text may be explained as a mere repetition of a meaning which was obvious. It should not be argued, because a direct precept is preferable to a vain repetition, that it is therefore necessary to establish *it* a royal duty *to appoint the substitute*, since the text would be otherwise unmeaning: were it so, since another is commanded to perform the work in default of the heir, and, if he be unable to perform it, all the partners being bound to undertake it, the last case is superfluous; but there is nothing superfluous if it convey a *general* precept, since no objection exists *to such an interpretation*. If the man himself be unable to act, a substitute must in all cases act for him; and, if there be no heir, any person may be appointed under the text

of YÁJNYAWALCYA ; or if none be appointed, the heirs, or others included in the partnership, are declared by NÁREDA to be the proper substitutes : but if the partner die, the rule of decision is delivered in the subsequent texts, “ If any travelling merchant, &c.” (XX).

This exposition seems accurate : let it be examined by the wise. We proceed to explain the texts of NAREDA. “ Coming from a foreign country ” (XX) ; travelling from one country to another, or arriving in a foreign country. Consequently such is the rule, if a merchant die on the road, or in a foreign country ; and this is merely an instance ; *for* nearly the same rule of proceeding must be understood, if he die in his own country. MISRA reads *prēyād abhyāgatō pi vā*, instead of *prēyād abhyāgatō vanic* ; the sense is the same, and obvious. What king ? The king in whose dominions the merchants have their abode ? or the king into whose dominions they have come for the purpose of trade ? The king in whose dominions they trade is considered as their second king, because he receives taxes and protects them : therefore that king, hearing of a merchant’s death, shall preserve his stock, and send intelligence of his death to the heirs, by means of a messenger. This is inferred from the expression ‘ until his heir appear.’ If there be an heir, the property of another is like poison to the king who appropriates it ; therefore he should immediately relinquish it. When the heir appears, what is to be done ? The stock should be delivered to him, otherwise his appearance is useless. The following text is explicit :

XXI.

VRĪHASPATI :—If one of the traders in partnership happen to die, his share in the stock must be produced before officers appointed by the king ;
2. And when any man shall appear calling himself heir to the deceased, let him prove his right of ownership by *the testimony* of other men, and then let him take his property.

“Officers appointed by the king,” to receive taxes from foreign traders: before those officers, as a channel of communication with the king, his share of the stock must be produced by his associates. “Heir to the deceased,” such as son or other person entitled to the succession: let him prove his right, as son, kinsman, or partner, by the testimony of other men. NÁREDA declares the distinctions of title to the succession (XX 2). If there be no kinsman in a direct line, let the king deliver it to persons allied to the deceased, his wife, and the rest: on failure of these, collateral kinsmen are entitled to receive it. CHANDÉSWARA says, “on failure of these, his collateral kinsman shall receive it:” and HELÁYUDHA says, “on failure of paternal kinsmen, the succession devolves on the maternal uncle and the rest.” Consequently the wife, the daughter, the daughter’s son, the father, the brother, and the rest, and the maternal uncle and other heirs mentioned under the head of Inheritance, are entitled to receive the stock in the regular order of succession. In the text of NÁREDA (XX 2), “if no such heir appear” signifies if the heir do not attend, or if it be proved that no such heir exists. If the stock be delivered to heirs, a part shall be retained by the king as a recompense for his care of it. VRĪHASPATI ordains it.

XXII.

VRĪHASPATI:—Let the king receive a sixth part from the property of a *Súdra*; a ninth from that of a *Vaisya*; a twelfth from that of a *Cshatriya*; a twentieth from that of a *Bráhmaṇa*:

2. But after three years have elapsed, if no owner of the goods appear, let the king take the whole; but the wealth of a *Bráhmaṇa* he must bestow on *Bráhmaṇas*.

A sixth part and so forth from a *Súdra* and the rest in order as enumerated; for it is a rule, that terms mentioned consecutively are separately referred to the correspondent terms: construction by the correspondent order of terms may be exemplified as it has been used

used by a great poet, and in other instances : “ the charms of the lyre, of the wreath of jasmine, of the blue lily, are surpassed by her delightful voice, her smiles, and her enchanting glance.” Consequently the king shall receive a sixth part from a *‘Sūdra*, a ninth part from a *Vaiśya*, and one part in twelve from a *Cshatriya*.

How can it be said that any part shall be received from the property of a *‘Sūdra*, since commerce is forbidden by MENU to a *‘Sūdra* as a man of inferior class ?

MENU :—A man of the lowest class, who, through covetousness, lives by the acts of the highest, let the king strip of all his wealth and instantly banish.

For commerce is declared to be the profession of a *Vaiśya*, whose class is superior to that of the *‘Sūdra* (Book I, V. iv). It should not be argued, that the text of MENU supposes times free from distress. MENU, permitting *Brāhmanas* to follow trade in times of distress, forbids the sale of liquids, &c. (Translation of MENU, Chap. X, V. lxxxvi); declaring the means of subsistence for a military man in times of distress, he forbids his recourse to the highest function (ibid. V. xcv); and, subjoining the text quoted, MENU expressly directs, that a man of the lowest class, who lives by the acts of the highest, even in times of distress, shall be punished by the king.

To this it is answered, that the text must be understood of a profession different from that of the *Vaiśya*. Thus the text of YĀJNYAWALKYA is pertinent, “ a *‘Sūdra* should serve twice-born men; but if he cannot thus subsist, he may become a trader:” and the profession of a husbandman is allowed to the *‘Sūdra* by the *Narasinha purāna*, “ let him rely on agriculture for his subsistence.” On this ground the practice of money-lending by a *‘Sūdra* has been mentioned in the first book, on Loans and Payment. In fact, at this time, men of the commercial class being few, though a distinction has been ordained, their occupations are followed by *Brāhmanas* and by men of mixed classes. The rank of a *‘Sūdra* being attributed to *degraded* men of the military and commercial classes and to men of mixed classes, and RAGHUNANDANA acknowledging that they become *‘Sūdras* by the neglect

glect of their proper duties, it is fit that a sixth part should be received by the king from them also. If men of the *Ambashtha*, *Múrdhābhishikṭa* and other classes, who claim the rank of *Vaisya* and *Cshatriya*, have not for many generations performed the ceremonies ordained by the *Vēda*, in the form observed by *Sūdras*, or if they revert to the duties of their own class after expiation, the rate of the deduction ought to be regulated accordingly. But RAGHUNANDANA acknowledges that a military man, though not of a mixed class, may be degraded to the servile class, under the text of MENU*, in which he expounds “gradually,” by small degrees; “servile class,” the rank of a *Sūdra*; and “*Brāhmanas*,” the scripture.

MENU:—The following races of *Cshatriyas*, by their omission of holy rites, and by seeing no *Brāhmanas*, have gradually sunk among men to the lowest of the four classes.

RAGHUNANDANA also admits the same in regard to men of the commercial and other classes. But this is not the opinion of CULLÚCABHATTA. Some persons of the *Ambashtha* and other classes, observing the duties and assuming the title of a *Cshatriya* or *Vaisya*, act as men of the military and commercial classes; some act as persons of the servile class; and some follow the profession of their mother's class. The decision should be regulated by usage, or by the opinion of RAGHUNANDANA. More on this subject may be sought under the title of Mixed Classes.

“But, after three years have elapsed, if no owner of the goods appear” (XXII 2): if the person, *to whom notice is given*, send a message that he is sick, and will subsequently attend; or send a message, or himself say, that the deceased has left a grandson, who will subsequently attend; but if no heir do appear, then let the king take the whole; but the wealth of a *Brāhmana* he must bestow on other *Brāhmanas*: so the *Retnācara*. The meaning is, that as the heritage of a *Brāhmana* cannot be taken by the king, so, even in this case, he may not appropriate the escheat.

XXIII.

* Erroneously cited as a text of NA'REDA. I find it in MENU, Chap. X, V. xliii.

XXIII.

MENU :—The property of a *Bráhmāna* shall never be taken *as an escheat* by the king ; this is a fixed law : but the wealth of the other classes, on failure of all *heirs*, the king may take*.

2. Let the king take all property, to which there is no heir, except that of a *Bráhmāna* : but let him bestow the wealth of a *Bráhmāna* on priests learned in the *Vēdas*.

If that be the case, how is he permitted to receive a twentieth part from the property of a *Bráhmāna* ? It should not be argued that there is no offence, because it is received as wages : it is merely implied in the text quoted (XXIII 1), that the property shall not be taken, on the supposition of a title *to inherit such property* ; but the king may even sell the stock to a *Bráhmāna*. Were it so, taxes being the wages of protection, even the receipt of taxes from a priest would be admissible. Therefore does MENU forbid it.

That is denied ; for taxes are not the wages of protection, but are received by the king because he has a title in the soil. Nor should it be objected, that they sometimes appear to be his wages, like sacrificial fees *paid to priests*. Sacrificial fees are not real wages ; if they were, there would be no distinction of fees for two sacrifices equally laborious. It is dishonourable in a king, any-how receiving taxes, not to protect *all his subjects* ; as it is in any man to omit the rites prescribed to his class, at dawn, noon, and eve.

Does not the king receive his revenue from the person who enjoys the produce of a soil in which the king has an interest, as he receives hire of *his own* house or chattel from the person who uses it ? The law has prohibited the taking of such wealth belonging to *Bráhmanas* ; for the property of a deceased *Bráhmāna*, acquired by commerce, his heritage and debts, might *otherwise* be

be received on account of the interest the king has in the soil: but it is admitted, that the king has an original property by occupancy, in his own house *now* let on hire; not merely a property as king: consequently, he must avoid taking a *Bráhma*n's wealth, in right of a property in it as king. This subject has been sufficiently explained. But if the wealth of a deceased *Bráhma*na be not accepted by *Bráhma*nas, then let the king cast it into water (Book I, V. ccxxxi 2).

In the third verse of NÁREDA (XX 3) "property without an owner" is explained by CHANDÉSWARA, property the owner of which is deceased: "without a claimant as heir," without a claimant entitled to receive it. It must be understood of all persons, other than the king, who are entitled to succeed, including the fellow student in theology, as declared almost expressly under the title of Inheritance.

XXIV.

NÁREDA:—What is ordained concerning one of several *persons or things*, whose nature and properties are the same, must be extended to all; for they are pronounced similar.

The periods of detention, three years and ten years, are contradictory (XX 2 and XXII 2). The following text again propounds a different period:

XXV.

BAUDHÁYANA:—Property without an owner, which had not belonged to *Bráhma*nas, the king may take for himself, having kept it one year.

"Which had not belonged to *Bráhma*nas;" which belonged to any other than a *Bráhma*na, that is, to a *Cshatriya*, and so forth.

CHANDÉSWARA thus reconciles the apparent contradiction, in regard to the period of detention, one, three, and ten years; the period is proportioned to the time required for the heir to appear, according

according to the remoteness of his residence, distant, more distant, or most distant : and MISRA gives a similar exposition.

What is distant ? what, more distant ? and what, most distant ? It cannot be said, that, if the heir reside in the king's own dominions, his residence is simply distant ; in another realm immediately adjoining, more distant ; or, if another kingdom intervene, most distant. At the time when one merchant died, a foreign realm intervened between the king's dominions and the town whence that merchant came : since he was settled at the greatest distance, his stock must be kept ten years. Afterwards, that king happening to conquer both realms, and some merchant from the same town dying, his stock may be appropriated after keeping it one year, since the place is now included in the king's own dominions. This would be a great disparity.

The difficulty may be reconciled on the opinion of RAGHUNANDANA, delivered in the *Udvāhatatwa*, in explanation of the term "different country."

XXVI.

Vṛihat-MENU :—Where language differs, and where a mountain or great river intervenes, it is called a different country.

2. However near, countries parted by a river of the same name are called distinct countries by the Self-existent himself :

3. And so *are countries* whence intelligence is not received in ten nights.

XXVII.

VṚHASPATI :—Some call the space of sixty *yójanas* a distinct country ; some, the space of forty *yójanas* ; others again, the space of thirty *yójanas*.

To reconcile the distinctions grounded on language and on distance, RAGHUNANDANA thus explains the texts : if the three *circumstances*

circumstances of difference exist, *the countries are distinct* within the distance of thirty *yōjanas*; or if two exist, and the distance be greater than thirty *yōjanas*; or if one exist, and the distance be not less than forty *yōjanas*: but within sixty *yōjanas*, if the language does not differ, nor a mountain or great river intervene, it is not a foreign country: so the *Suddhi Chintāmeni*.

Consequently this is intended by the term distant: if two of the *circumstances mentioned* exist, and the distance exceed sixty *yōjanas*, the country is more distant; and if the three exist, most distant: but one of those circumstances must almost ever occur where the distance exceeds sixty *yōjanas*. “However near, &c.” (XXVI 2); however near, (within the space of forty *yōjanas*;) if the name of the countries differ, and a river intervene, they are called different countries. Some thus explain the texts. But others hold, that, if a river, or large body of water, of the same name with the countries, intervene, (such as the river *Sindhu* and others,) the countries, however near, are called distinct countries: thus the eastern bank of the dangerous river *Sindhu* is a different province from the western bank, both provinces bearing the same name with the river: and so *Pānchanada*, or the region of five rivers, (meaning the *Sindhu* and other streams,) is the name of a country.

“And so, whence intelligence, &c.” (XXVI 2): this must be understood as a description similar to the distance of sixty *yōjanas*. Or it may be thus explained: a place within a country of the same name is distant; no other country intervening, a bordering province is more distant; another country intervening, the remoter province is most distant: thus north *Rā'd'ba** is distant from south *Rā'd'ba*; *Magad'ba* is more distant; *Cúśi*, most distant. Many other cases may occur, but these may be settled in a similar mode under the texts quoted.

What is the rule if the merchant's place of abode were near? The stock must be kept so long as the heir be expected to appear. In fact, on all occasions, sufficient time should be allowed: a specific period is merely mentioned illustratively. The king may appropriate the stock of a deceased trader, at the expiration of one year, after ascertaining from his kinsmen in the same town, that there is no heir in a distant country, if it were supposed that such an heir existed. But if it happen that an heir afterwards appear,

* Pronounced *Rār*; the region west of the *Bhágírat'bí* river.

appear, and, proving his right of inheritance, claim the stock, what shall be done in that case? Without relying on the king's property in that stock, it should be delivered to that heir, even though it have been given to some other person; for a gift without ownership is void. Let it not be objected, that the king is consequently guilty of theft; for there is no theft in disposing of property, not knowing it to belong to another.

Shall the king pay interest or not? He shall not pay interest; the text of SAMVERTA (Book I, V. lxxii) forbidding interest on a sum which was not originally known to be due.

It must be noticed, that a specifick time is appointed by Sages for the custody of stock by the king; but no specified period being appointed for the custody of it by a partner or a stranger, the principal stock would be annihilated if such person were entitled to a tenth part of it for every moment of its custody: therefore one tenth part of it shall be received for the custody of the stock until it be sold; but if it be abandoned in the interval, wages only shall be received. If it happen that the goods are sold the next day after they were bought, a tenth part shall be received even for one day's custody; and the same allowance must necessarily be admitted, even for one year's custody, if the sale be made at that interval of time; for no specifick period having been appointed for custody, a share cannot be allowed on that account. Custody by the king has been ordained, not the transaction of business regarding the stock; but if the business be transacted by the king's own choice, through the channel of his officers, he shall receive a greater proportion of the stock.

SECT. II.—*On Partnership among Priests
jointly officiating at holy Rites.*

XXVIII.

NÁREDA:—Should a priest officiating at holy rites
be

be disabled, let another in like manner perform his work, and receive from him the stipulated share of the gratuity.

“Disabled;” the term is so explained in the *Retnâcara* and *Vivâda-Chintâmeni*. The expression “in like manner,” extends the law of commerce to this case: but in commerce, if one partner be disabled, his work shall be performed by another; and RAGHUNANDANA, in the *Malamâsa tatwa*, admits the extension of the law for secondary cases to the primary or principal case. In the former text (XVIII) the same word signifies “disabled;” and the sequel expresses, that “the heir shall undertake the work.” The exposition therefore appears accurate.

“Another;” his son or other heir; on failure of an heir, a partner able to perform the work; or if there be none such, a stranger. This must be understood, as it has been already declared in the preceding section: but the substitute does not receive wages as in commerce, for he would be a hireling if he received wages generally; and a reward equal to a tenth part is not proper in this case. Thus a priest, engaged in a sacrifice, falls sick after the first day; afterwards, a substitute performs his work during ten days; if the substitute received a tenth part, and the priest first engaged received the whole of the residue, their rewards would be very disproportionate: but in commerce there is no such disproportion, for the substitute is paid by the trader out of his own stock. On this consideration the Sage propounds the reward: “and receive from him, &c. ;” meaning, that the law of commerce is not extended to this part of the case.

“Stipulated;” what has been stipulated by the substitute for the performance of the work, and has been promised by the priest who was first engaged.

XXIX.

VRIHASPATI:—So, if one of several persons, jointly engaged in *sacrificing or other* work, should be disabled from acting in it, let his part of it be performed

performed by a kinsman, or by all the other associates.

“Work;” sacrifice or the like.

The *Retnâcara*.

MISRA inserts this text with an observation, that “VRĪHAS-PATI declares the law generally.” It is inserted by both, under the title of Priests officiating at holy rites: the inference will be mentioned.

So, if one of several persons jointly engaged in commerce or other business by a man disqualified through incapacity or otherwise, should be disabled from acting in it, his part of it should be performed by a kinsman; or, on failure of a kinsman, by all the other associates. Such is the meaning of the text.

It may be so in commercial cases; but how should that be done in the instance of a sacrifice? for, a sacrifice being performed for the benefit to accrue therefrom, it is contrary to rule that the work of one should be performed by another; and two such rites cannot be performed at once by the same person, since it is forbidden to perform at once two rites of a different nature. The answer is, it may be performed according to the distinctions of sacrifice: if a hundred thousand sacrifices be undertaken, five or six persons being engaged to officiate as *Hôtâ*, or reader of the *Rigvêda*, should one be disabled, his part of the work may be performed by the others; and all admit that the *Hôtâ* may officiate as *Brahmâ*, or superintending priest.

If this text, expressing work generally, be considered by MISRA as relating to all cases, whether commercial or otherwise, why has it not been inserted in the first section on Partnership among Traders? The answer is, it is inserted here to show that such a rule exists in regard to partnership among priests officiating at holy rites. It should not be objected, that this text relates to commerce only, because it coincides with the text of NÂREDA on the subject of commerce (XVIII). Its application to holy rites, deduced from the comprehensiveness of the expression, cannot be abandoned; and all difficulties are removed by admitting this rule in partnership among officiating priests. SANC’HA and LIC’HITA concur also in directing the substitution of a kinsman.

XXX.

SANC'HA and LIC'HITA :— If an officiating priest die before the sacrifice be completed, his kinsman sprung from the same original stock, or his pupil, shall complete his part of the work ; but if he have no kinsman, let another priest be engaged.

It is implied, that his kinsman, or pupil, should complete his part of the work as a favour conferred on him : if they do not perform it, another person must be sought. The next in succession need not be selected, as in cases of inheritance ; for the same rule of *substitution* is applied by VRĪHASPATI to the other associates, and the law is the same in commercial cases. But if they require a share of the gratuity, it must of course be given.

Is not the text superfluous ; for, the general law requires that, if the father be disabled, the son must perform what should have been done by him ? No : for, should the sacrificer say, “ this man has fallen sick, I appoint another to perform his part of the work, his son shall not perform it ; ” the text would serve to prevent such conduct. It therefore appears, that, if a priest engaged to officiate at solemn rites be disabled, the substitute should be appointed by him. The priest being bound to perform the rites by an engagement in this form, “ I will act according to the best of my knowledge ; ” should he be disabled, it is proper that he should provide the substitute ; otherwise he would be guilty of a moral offence, not effecting the work he had engaged to perform : and it must be understood that the form of appointment is this : “ I engage you to perform such a work undertaken by me.”

XXXI.

YAJNYAWALKYA :— A man of crooked ways let the other partners expel without profit ; and let a partner unable to act appoint another man to act for him : this law is declared for partnership among

among priests who jointly officiate at holy rites, and among husbandmen or artificers.

This shows, that the person unable to act should make the appointment: in commerce, the substitute should be chosen by him, not by the other partners; and that law being extended to partnership among priests by the terms of the text, it appears that the person who is unable to act should appoint the substitute.

VÁCHESPATI BHATTÁCHÁRYA holds, that another priest should be engaged by the sacrificer, if the priest first engaged be defiled; for his defilement disqualifies him for appointing a substitute. Even in other similar cases, another priest should be appointed by the sacrificer. But it is not incongruous to say, that another priest should be appointed with the approbation of the priest first engaged.

If the son or pupil of the person who is unable to act be not equally skilled with the father in performing the rites undertaken, the sacrificer may reject him: such is the induction of common sense. But if the person appointed by the officiating priest be equally capable with himself, he should not be rejected: or if the sacrificer cannot produce a person superior to him who was selected by the officiating priest, then also the person engaged by the officiating priest shall perform the work: or should the officiating priest provide a substitute equal to himself, and the sacrificer provide one superior to him, even then the person provided by the officiating priest shall perform the work; for it is not proper that the sacrificer should now require a person of superior qualifications. In the same mode, further rules may be established.

XXXII.

MENU:—If an officiating priest, actually engaged in a sacrifice, abandon his work, a share only in proportion to his work done shall be given to him, by his partners in the business, *out of their common pay.*

If he abandon his work, by reason of sickness or the like, a share of the sacrificial fee shall be given to him in proportion to his work done. The *Retnâcara*.

So likewise VÁCHESPATI and CULLÚCABHATTA. But if he wickedly abandon his work, a distinction is taken, which will be mentioned.

XXXIII.

MENU :—But if he discontinue his work *without fraud*, after the time of giving the sacrificial fees, he may take his full share, and cause what remains to be performed by another priest.

In sacrifices and other holy rites celebrated according to the forms of MADHYANDINA, the fees are directed to be paid in the middle of the ceremony. In such a case, if an officiating priest be disabled after the payment of the fees, he may take his full share, and cause the work to be completed by another. Such is the exposition of CULLÚCABHATTA ; but MISRA, giving the same exposition, explains “another priest,” a son, &c. : this, however, may be understood as also intended by CULLÚCABHATTA.

“His full share ;” his share on a partition with the other officiating priests. If there be no son, what shall be done ? It should not be said that causing the work to be performed by another, the disabled priest should give him wages ; or if he perform it as a favour, there is no objection to the omission of wages : but the expression “he may take his full share,” supposes the work to be completed by his own son. Were it so, the text would be superfluous. Nor should it be said that the text intimates this distinction ; if the disability arise before the fees are paid, the sacrificer should engage another priest, and, dividing the gratuity, pay a share to each ; but if the fees have been paid, the priest who has received his fee may appoint another selected by himself. There is no ground for a distinct preferable right of the officiating priest and sacrificer, to appoint the substitute before, or after, the payment of the fee. Until the sacrifice be completed, there is apprehension

prehenſion of failure in the ceremony ; elſe what remained, need not be performed.

To this queſtion ſome reply, the fee received by the officiating prieſt becomes his abſolute property. How ſhould the ſubſtitute, afterwards completing the work, be entitled to receive a ſhare of it from him ; for the ſacrificer's act of religion would be impaired, if he gratified one prieſt out of the property of another ? Therefore ſhould a perſon different from the ſon or other heir complete the work, he is entitled to receive ſome additional recompenſe from the ſacrificer. The fee for a ſpecifick part of the ceremony having been already paid, how ſhould a gratuity be afterwards payable to the ſubſtitute, ſince it is not ordained by the law ? This objection is wrong ; for the general law ſhows that fees ſhould be paid by way of recompenſe.

XXXIV.

Purāna :—The man who obtains, by falſe pretences, a *Bráhmaṇa's* recital of *holy texts*, or pays not the due reward, will certainly go to a region of torment.

This is moral law, not the law of judicial procedure ; conſe- quently, ſhould the ſacrificer deſy hell, whence ſhall the ſubſtitute who completes the work obtain his wages ? Labour unrewarded is not conſiſtent with judicial law. Should he not therefore receive a recompenſe from the officiating prieſt ? and even though a gratuity be given to him by the ſacrificer, ſhall he not receive a ſhare of the fee from the officiating prieſt ? Since *MENU* directs that the prieſt firſt engaged may take his full ſhare, a fee by way of recompenſe from the employer, being required by moral law, ſhould alſo be eſtabliſhed as requiſite under the law of judicial procedure ; for the text intends it. But when a ſon is the ſubſtitute, he is ſufficiently recompenſed by the gratuity paid to the father ; conſequentially there is no difficulty, even though another fee be not paid.

The ſubſtitute ſhould be appointed by the officiating prieſt, even in this caſe (namely, where the fees have been already paid) ;

paid); for he has agreed to perform the work : but if the priest, not afraid of violating his engagement, refuse to appoint another person, let the sacrificer engage another priest, that his business may be effected ; whether it be a sacrifice according to the forms of MADHYANDINA, or other solemn rites, such as the *jyôtiṣh-tôma* and the like. In this case, if the fee have not been already paid, the share should be subdivided ; but if it have been paid, it is obvious *that the full share shall be retained, and a separate recompense be given to the substitute.*

It should not be argued, that the act is perfect at the moment when the sacrificer has engaged the priests. As hunger is not satisfied before victuals are prepared, merely by commencing their preparation ; so the benefit of solemn rites, yet unperformed, is not secured by the mere undertaking.

Payment of fees in the middle of the ceremony is now practised, in conformity with the opinion of RAGHUNANDANA, at the *Durgâpûjâ* , and other festivals : the same form should be there observed in regard to the appointment of priests ; for the reason of the law is equally applicable.

MENU himself propounds the shares in particular sacrifices, as an example of the distribution of fees, to which the expression “ his full share ” alludes.

XXXV.

MENU :—Where, on the performance of solemn rites, a specifick fee is ordained for each part of them, shall he alone who performs that part receive the fee, or shall all the priests take the perquisites jointly ?

2. *At some holy rites, let the Adhwaryu, or reader of the Yajurveda, take the car, and the Brahmâ, or superintending priest, the fleet horse ; let the Hôtâ, or reader of the Rîgvêda, take the other horse, and the Udgâtâ, or chanter of the Samâvêda, receive the carriage, in which the purchased materials of the sacrifice had been brought.*

3. *A*

3. *A hundred cows being distributable among sixteen priests, the four chief, or first set, are entitled to near half, or forty-eight; the next four, to half of that number; the third set, to a third part of it; and the fourth set, to a quarter.*

At those solemn rites, in which specifick fees are ordained to be paid for each part of them at the commencement and so forth, shall he alone, for whom the fee is paid, take it; or shall he receive a deduction only, and all the priests take and divide the perquisites? On this doubt, the legislator propounds this text (XXXV 1).

CULLÚCABHATTA.

“He alone who performs that part shall receive the fee;” where specifick fees are ordained by law for each part of the rites, payable to the persons officiating as *Brahmā* and so forth, they shall receive those several gratuities, whatever be the amount; and not throw the fees together, and divide the whole. The import of the subsequent phrase, “take the perquisites jointly,” will be explained hereafter. How much shall be the fee, for whom, and at what sacrifice? To illustrate this, he himself instances one case: on preparing the sacrificial fire for those who follow certain *sāc’hās* of the *Vēda*, a car should be given to the *Adhwaryu*; a fleet horse to the *Brahmā*; and the carriage in which the moon-plant was brought to the *Udgāta*: therefore, lest the perspicuity of the rule be obscured, whatever fee is directed on whatever account, *that, and no other*, shall be paid. So

CULLÚCABHATTA.

“Those who follow certain *sāc’hās* of the *Vēda*,” those who study certain *sāc’hās* of the *Vēda*. “On preparing the sacrificial fire;” on preparing it for oblations to fire.

The *Adhwaryu* and the rest are distinct officiating priests, whose duties are well known. The *Brahmā* and others shall not have a share of the car; nor the *Adhwaryu* and the rest, a share in the value of the *Brahmā’s* horse. CULLÚCABHATTA mentions a fleet horse, to show the relative inferiority of these priests in the order in which they are mentioned. If there be no specifick fee for each part of the rites, a partition shall be made as suggested by the text, “all the priests shall take the perquisites jointly.”

jointly." He states a case as an instance of partition : where four sets of priests officiate, the second set is entitled to half of what is receivable by the chief set, and so forth. The third set is entitled to a third of what is receivable by the first set, not to a third of the whole ; for the first and second set having received three fourths, a third of the whole cannot be paid out of a quarter only. Therefore the text must be understood to mean a third of what is receivable by the first set : hence it amounts to something more than half a quarter added to a quarter of this fraction ; and more than three quarters added to half a quarter of the whole sum have been distributed ; a trifle remains, somewhat less than half a quarter ; but the fourth set ought to receive a quarter of half the sum, or a quarter of the share receivable by the chief set ; that is, half a quarter of the whole : yet there remains not so much. This difficulty is reconciled by CULLÚCABHATTA, CHANDÉSWARA, VÁCHESPATI MISRA and others. The word *ardha* in the masculine gender is employed in the sense of a part in general, whether more or less *than half*, as noticed by AMERA ; from the context, it must of course signify something less than half ; and it signifies a part *nearly equal to half*, for it is a rule, that equal parts are understood when the proportion is not specified ; thus they reconcile the distribution. At the *vyāhṛtī*, sixteen officiating priests are required by the law : there the *Hótā*, *Adbwaryu*, *Brahmā* and *Udgātā*, are the four chief persons, *or first set*, entitled to half the fee ; and the fee, directed by holy writ, consists of a hundred cows : an equal part would amount to fifty ; something less than that, or forty-eight cows, shall be received by the *Adbwaryu* and the rest. The next, namely the *Maitrāvaruṇi*, *Prestōtā*, *Brāhmenāchch'hanṣi*, and *Pretiprestōtā*, who are entitled to half of what is received by the first set, according to all readings of the text, (which differ in form, not in substance*,) shall receive twenty-four cows ; the difficulty being here reconciled by allotting something less *than a quarter*.

* *Tad arddha bhājab* ; entitled to half of that number ; to half of that half, a phrase similar to that of " screened by a screen." MISRA reads *tad arddhinaḥ* ; and notices another reading *d'witīyinaḥ* : the last is however pertinent, for the term may well signify entitled to one part in two. The first reading is approved by CHANDE'SWARA and CULLU'CABHATTA. [I have transferred these remarks from the text to a note, for the sake of avoiding too long an interruption of the sentence.] T.

quarter. The third set, consisting of the *Achch'hávāca*, *Nēshtā*, *Agnid'bra*, and *Pretihertā*, shares a third part of what is receivable by the first set, or sixteen cows; and eighty-eight cows have been thus distributed: the fourth set, consisting of the *Grāva*, *Unnēta*, *Pôtā*, and *Swabrāhmaṇya*, shares a quarter of what was receivable by the chief set, or twelve cows: thus the hundred cows are distributed. The same form is to be understood in all cases.

Adbwaryu, &c. are sixteen denominations of persons engaged for the several parts of the solemn rites of sacrifice and so forth, explained in the law concerning religious ceremonies. Disputes among them occur at the time of appointment, not at the time of distributing the fees; for the law has obviated disputes concerning the distribution. Each should be appointed to that part of the ceremony for which he is qualified; or he may be admitted, through favour, to an office for which he is less fit.

The distribution of cows at the *jyōtishtōma*, as mentioned by CULLÚCABHATTA and others, is not merely grounded on the reason of the law; but the law itself ordains such a distribution.

XXXVI.

SRAUTA CĀTYĀYANA:—Twelve to each of the first set, six to each of the second, four to each of the third, and three to each of the last.

This supposes four priests in each set. It must be noticed, that if priests be engaged for the first and second sets, and the others be personated by grafs*, the whole fee should be divided into three parts, of which two should be given to the chief set, and one to the second: for the law shows, that the second set should have half the quantity received by the first. So, if the first and third sets only join in the work, the fee should be divided into four parts; of which three should be given to the first set, and

* When a religious ceremony is performed by a single priest, he places on his right hand fifteen blades of *cus'a* grafs, to personate the superintending priest: and at rites, which should be performed by four or by sixteen priests, the representatives of some of them are similarly made of grafs if the number of persons attending be insufficient.

and one to the third: or, if the concert be only between the first and fourth sets, the fee should be divided into five parts, of which four should be given to the first, and one to the fourth set: if the second and third sets only unite in performing the rites, the fee should be divided into five parts; of which three should be given to the second set, and two to the third. If the second and fourth sets only officiate, the distribution is the same which is made when the first and second only act. If the third and fourth sets only officiate in the joint work, the fee should be divided into seven parts; of which four should be given to the third set, and three to the fourth: so if the first, second, and third sets act together, the fee should be divided into eleven parts; of which six belong to the first set, three to the second, and two to the third: if the first, third, and fourth sets only officiate together, the fee should be divided into nineteen parts; of which twelve belong to the first set, four to the third, and three to the second: if the first, second, and fourth sets only act together, twenty-eight shares should be distributed; of which sixteen to the first set, eight to the second, and four to the fourth: but if the second, third, and fourth sets only act together, thirteen shares should be distributed; of which six should be allotted to the second set, four to the third, and three to the fourth. If one priest only be engaged for any one of the sets, and the others of that set be personated by grass, but a competent number of priests be engaged for the other sets, then, whoever performs the work of a priest personated by grass shall receive his share. This rule must be admitted in regard to all the sets; and the same method is applicable to other sacrifices. In fact, at this time, and in this province, the employment of sixteen officiating priests is little practised; but the employment of four, as directed in the *Grihya-sangraha*, is frequent.

XXXVII.

The Grihya-sangraha. — In gaming, in judicature, in holy fasts and solemn rites, a stranger sees what escapes the observation of the principal: therefore,

2. Let

2. Let one be appointed to perform the work ; let another hold the book ; let a third expound questions ; and thus let the business be conducted.

The first text declares the motive ; in the second verse strangers are distinguished : “ let one be engaged in the work,” namely the spiritual teacher ; and he officiates as *Brahmā*, or *superintending priest*, at the performance of sacrifice as a part of a solemn act of devotion. If the principal himself do not perform the sacrifice, the spiritual preceptor officiates as *Hôtā*, *presenting the oblations* ; and if the man himself do not perform the principal rite, he officiates as his substitute. One person holds the book ; and a by-stander expounds questions.

By “ strangers ” are denoted persons who attend for any purpose at gaming and so forth ; but in the performance of a sacrifice, since a text ordains that persons should be engaged for every part of the business, their appointment by name to particular offices must be understood. Herein RAGHUNANDANA concurs ; and the learned say, that a previous appointment made with civility must be understood. Consequently, if it be supposed that it is solely meant to instance persons engaged *for the performance of rites*, that is applicable to those only who are enumerated. Therefore, they are thus counted ; first, the person engaged for the ceremony, namely the *Brahmā*, for he is appointed to check the utterance of words unsuitable to the rites, and to notice what is done, and what is omitted. If the man cannot perform the sacrifice himself, then the *Hôtā* is also a person engaged for the ceremony ; for he is employed to recite texts, and to offer the clarified butter. Both, being persons engaged in the work, are comprehended in the same term. A substitute is of two sorts, the *Hôtā* and another person ; we have therefore said briefly, that both are comprehended in the same term, and that the employment of four officiating priests is proper. In fact, the *Brahma* or *superintending priest* should be considered as a stranger engaged in the work ; for the *Hôtā* and substitute cannot give more attention than the principal. Thus the *Brahmā* notices what is done, and what is omitted ; a by-stander notes the form ; and the
reader

reader views the book, for the *Hôtâ* cannot attend both to the book and the oblations ; though, as representative of the person for whom the ceremony is performed, he should be considered as the principal *in the rites*.

Is not the reader also appointed for the rites ? The term “ appointed for the rites ” must be understood as intending a person different from the reader, in like manner as one name of kine may denote cattle of that sort, and a synonymous term in the same sentence may intend cows only. Or the *Brahmâ* is useful and necessary to preserve due obedience to the commands of the *Vêdas*, that the rites may have their effect, as a pestle is necessary to pound rice and other grain ; but the reader is only employed, on the reason of the law, to hold the book. If a priest is not found for the employment, the *Brahmâ* may be personated by grass ; but if the principal himself can remember the texts, the reader is not personated by grass. Thus “ appointed for the ceremony,” signifies a person employed as requisite to the effect of the rites.

“ Let a third expound questions:” for example, when the *Hôtâ* attends not, it is asked, “ what is the consequence when the *Hôtâ* does not attend ?” Or, after the sacrifice is begun, the reader says, “ resting your hands on the ground, name the Earth inaudibly.” On hearing this direction, the *Hôtâ*, placing his hands on the ground, asks, “ in this manner ?” The by-stander replies ; “ even so,” or, “ not so.” Such answer is the business of the by-stander, explained by AMERA, “ he who shows the forms.” Let the *Brahmâ* superintend the rites, noticing whether the *Hôtâ*, through forgetfulness, do any thing contrary to proper form. Thus are four officiating priests employed. When the work is finished, gifts shall be received by them from the person for whom the sacrifice is performed ; and those gifts are called sacrificial fees (*dacshinâ*), because of ability (*dacshatwa*) to produce effect.

By whom shall the fee be received ; by one person ? or jointly by all ? On this doubt it is directed, under the text of MENU (XXXVI), that the specifick fee shall be received by him for whom it is ordained ; but where no specifick fee is ordained, it shall be shared among all the priests. With this the *Ch'handôga-parîśishta* disagrees ; for it excludes the reader and the by-stander, directing

directing the fees to be divided between the superintending priest and the person who presents the oblations.

XXXVIII.

The *Ch'handôga-paris'ishta* : — The reward which has been ordained for him shall be given to the *Brahmâ*, or *superintending priest*, when the business is completed ; and where no reward is declared, let a *vessel full of grain* or *pûrna pâtra* be given.

2. If another perform the office of sacrificer, he shall take half the sacrificial fee ; but if the principal himself perform both offices, he shall give the fee to another person.

It cannot be argued, that, *Brahmâ* being explained by RAGHUNANDANA, in the *Durgôtsava tatwa*, as bearing the general sense of a person who causes the rites to be performed, the reader is entitled to a share of the sacrificial fee ; and, by parity of reasoning, the same follows in respect of the by-stander also. In the expression, “ if the principal himself perform both offices,” “ both,” referring to what has preceded, shows, that in the case of his performing both the office of *Brahmâ* and *Hôtâ*, the fee should be given to another person ; and that argument would be inconsistent with what is written in the *Sanścâra tatwa*, “ let him give the fee for the principal rite to the teacher who superintends the rite ; but if the *Hôtâ* be a different person from the sacrificer, no specifick fee being mentioned for their separate offices, the *Brahmâ* and *Hôtâ* shall share the sacrificial fee.”

Some hold RAGHUNANDANA's meaning to be this : let all the priests share the perquisites, under the text of MENU (XXXV 1) : but the text quoted (XXXVIII 1) is a general direction, which supposes a case where no reader is employed ; for the difficulty is removed by interpreting “ another person ” (XXXVIII 2), another teacher by book : and this supposes a case where the sacrifice is the principal rite ; but if it be a secondary part of the rites

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only, the *Brahmā* and the rest not being employed in the principal ceremony, the fee for that ceremony shall be received by the reader, who is employed in it. Shall not the reader, being employed even in the sacrifice, receive a share of the sacrificial fee? And, if this be admitted, is it not inconsistent with the rule, that “the *Brahmā* and *Hôtā* shall share the sacrificial fee?” *The answer is*, where the sacrifice is only a part of the ceremony, the reader not being excluded from the perquisites of the principal rite, the fee for that sacrifice, which is only a part of the ceremony, shall be received by the *Brahmā* and others employed in that alone: and here the reason of the law shows, that he only who is appointed to perform a specifick work, shall receive the specifick fee ordained for that work. If he do not cause that specifick rite to be performed, still may it not be said, that there is no obstacle to his receipt of the perquisite, making it a rule that he who causes the principal work to be performed causes the part to be performed, as it is a rule that he who performs the principal work performs the part? *This question is thus answered*, let him receive a share of the sacrificial fee; but, in the principal rite, let the substitute and the *Hôtā* receive a share of the gratuity allotted for that rite. The expression “the *Brahmā* and *Hôtā* shall share the fee,” is intended generally. Under the direction for a specifick fee to the *Brahmā*, the sacrificial fee is shared by all the priests. To remove the inconsistency with the *Ch’bandōga-parīśiṣṭa*, may not the text of MENU be limited to the *jyōtiṣṭōma* and similar sacrifices? No; for MENU is declared pre-eminent by VRĪHASPATI, (Book V, V. cccxxxiii), and it is regular to explain the texts of other Sages according to that law. How shall the partition be made in this case? Not in the form directed by the text above cited, “the four chief are entitled to half, &c.” (XXXV 3); for no mention is made, in this case, of chief, secondary, and subordinate priests. Let it not be objected, that such mention is made in the text last cited, “let one be engaged in the work, &c.” (XXXVII 2); for there is no difficulty in considering that text as merely intended for elucidation. To this it is answered, the numbers stated for the purpose of elucidation must be considered as satisfying that question: and there, the superintending priest and the person who presents oblations are first; for they are substitutes for the principal, and
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are together mentioned by RAGHUNANDANA as first. Thus the reader is entitled to half, and the by-stander to a third, of what is receivable by the superintending priest, and by the *Hôtâ*. Consequently the superintending priest and the *Hôtâ* shall each receive three shares, and the reader a share and a half, of the whole fee divided into eight shares and a half; the two chief priests receive equal shares, but the by-stander receives one share only: however, should there be several by-standers engaged to attend the rites, the sacrificer should himself pay a gratuity to the others; for the text mentions one by-stander only, "let a third expound questions" (XXXVII 2).

Others again hold that the words of MENU, "all the priests take the perquisites jointly," relate to rites which must be performed by four priests; for that is suggested by the subsequent text concerning solemn rites, where the plural number is used (XXXV 3). But the text of the *Ch'bandôga paris'ishta* relates to solemn rites performed solely by the *Brahmâ* or the like; and RAGHUNANDANA says, "it intends generally the person who causes the rites to be performed," meaning rites different from sacrifice; for, even in that case the payment of fees being necessary, that is set forth in the expression "when the business is completed."

It must be considered, that the words of MENU, "all the priests share the perquisites," show a partition of perquisites in all rites, since no distinction is mentioned: and, by the mention of the chief or first set, partition of the perquisite is shown in solemn rites performed by sixteen priests. The word *Brahmâ* being employed in the text above cited (XXXVIII), he only receives his fee when the sacrifice is completed: and by parity of reasoning, the same rule will have force in other cases. There is no authority for limiting the sense of the word *Brahmâ*: but if it be taken absolutely, why may not he who causes the rites to be performed receive a share of the perquisites? It is fit that all the priests employed in the sacrifice should receive a share of the perquisites according to their employments.

Some remark on the text, "let him deliver the sacrificick shed, and the furniture of it, to the officiating priest," that even the furniture of the shed must be divided. But there is no proof from any positive ordinance, or from settled usage, that he who
causes

causes gifts to be made, has a title in all the chattels given at a distribution of alms. It is the current practice, for the sacrificer to give separate gratuities to the superintending priest, to the reader, and the rest. The sense of the text quoted (XXXVIII 1) is this: whatever reward on whatever occasion is so ordained by the law, (at some holy rites a cow, on another occasion cloth, at other rites gold, and so forth;) that reward shall be given when the work is completed: and it is applicable to other rites, besides a sacrifice performed according to the forms of MADHYANDINÁ and the like; for there it is directed that the fee shall be paid in the midst of the solemnity: this is intimated by the expression "*on whatever occasion.*" The specifick fee is not mentioned, but a reward shall be given in the form of a *pūrṇa pātra* or the like.

XXXIX.

The Gr̥hya-saṅgraha and Parīśiṣṭa pracāsa define a *pūrṇa pātra*:—Eight handfuls are a *cunchi*: eight *cunchis*, a *pushcala*; and four *pushcalas*, a *pūrṇa pātra*.

Lawyers say, that a *cunchi* is a quantity of rice sufficient for one meal. If the party be unable to give the *pūrṇa pātra* mentioned, then the *Ch'handōga-parīśiṣṭa* directs:

XL.

Let him make a *pūrṇa pātra* of so much rice as will satisfy one great eater, and no less: this is a settled rule.

"If another perform, &c." (XXXVIII 2): it must be understood, from parity of reasoning, that, if there be others, a reader and a by-stander, even they shall partake of the fee. If the principal himself perform the offices both of *Brahmā* and *Hótū*, let him give the fee to another person, to the reader and by-stander. Or, if he perform both his own office and that of a stranger,

stranger, let him give the fee to another person, that is, to any *Brâhmana*; otherwise the rites would be imperfect.

XLI.

SANC'HA and LIC'HITA:—If an officiating priest die, *or absent himself*, let the sacrificer afterwards engage another priest: the sacrificial fee belongs to the priest first engaged, *or to his heir*; but he who is afterwards called shall receive something. Should he absent himself, giving notice of the *probable* time, and of the *cause of his absence*, let the sacrificer wait that time, and not perform the ceremony with another priest: but if he be hurried, he may cause that sacrifice to be finished by another; and the absent priest, who is forsaken, shall receive some trifle *as a token of respect*. Should the officiating priest wilfully absent himself, though forbidden, while the ceremony is incomplete, he shall be fined a hundred *panas*: or if he be a grievous offender, the family-priest *shall be amerced*. To priests engaged to officiate at solemn rites, but afterwards found to be afflicted by disease, degraded, insane, of ill fame, or disabled by age, favour should be shown; *but other priests should be appointed in their stead*. If the officiating priest wilfully desert the sacrificer, who is not a degraded person, *nor otherwise disqualified*, he shall incur an amercement of two hundred *panas*: and so shall the sacrificer, who forsakes the officiating priest, though he be not degraded, *nor otherwise incapable of acting*. But a man should readily forsake an ignorant *or foolish* priest, though he be

not degraded ; and a priest may abandon a sacrificer who gives not *due rewards*, even though *otherwise* void of offence.

It has been already said, that if the officiating priest be disabled, his work should be finished by another person : the Sage now declares the rule, when a priest engaged to officiate does not attend, “ let the sacrificer afterwards engage another priest.” If he be accidentally delayed in coming from his house, or if the sacrificer should hear that the priest has gone to another town without giving notice that a delay in his attendance may be expected, then another priest may be appointed. But CHANDÉS-
WARA explains the text, “ If one of several priests appointed to officiate at solemn rites should die or be disabled, and the sacrificer engage another priest.” This (*absence*) must also be understood from the terms of the gloss, “ die, or be disabled.” MISRA says, “ if one of the officiating priests die, let the sacrificer engage another priest :” and the meaning is, “ if the priest first appointed go to another town, or die, the fee belongs to him, though another priest be engaged ; and the other priest, considered as a stranger, shall receive some recompense in proportion to the work.” This appears from the literal sense of the Sage’s text, and from the explanation given by MISRA and others. What recompense shall he receive ? a share of the sacrificial fee ? or another gift from the sacrificer ? If he receive a share of the sacrificial fee *in proportion to the work*, then should the priest, after being engaged for the rites, absent himself on the first day, he would have no share of the sacrificial fee. Under the exposition of CHANDÉS-
WARA, (“ the fee payable to the person first called shall be proportioned to the work, and be received by his heirs in the case of his death,”) it is said that a fee proportioned to the work shall be received by the person first called, or by his heir. Why is it declared that “ the sacrificial fee belongs to the priest first engaged ?” Should it not rather be declared, as in the text of NÁREDA (XXVIII), that “ he shall receive a share of the gratuity ?” This text has the same import with the words of NÁREDA : the former text of SANC’HA and LIC’HITA (XXX), directing the appointment of another priest, intimates a partition of the sacrificial fee : by mentioning, in the present text, that

the gratuity belongs to the priest first appointed, it is denoted, that if the first priest return after another priest has been engaged, the first priest shall perform the work : on this consideration, it is directed that the other priest shall receive something. If the former text (XXX) relate to the death of the priest, how can this part of the present text (XLI) apply to the case of absence ; and why has CHANDÉSWARA explained it “ if he die, &c. ? ” “ Die,” in the former text (XXX), may be taken in an indefinite sense. Then, the text of NÁREDA coinciding with that of SANC’HA and LIC’HITA, the word explained “ disabled ” would signify dead ? Some rule is necessary for the case of a priest unable to act : the text of NÁREDA cannot apply to a case of death ; for he says, “ receive from him (from the first priest) the stipulated share.”

This first rule being applicable to the case of absence without notice, the Sage delivers a second rule : “ If he absent himself, after notifying the time, (a month, a fortnight, or the like,) or the cause of his absence, let the sacrificer wait his return, and not perform the ceremony with another priest : ” so the *Retnácara*. A priest engaged for a sacrifice which may be performed on many *different* days, or for the reading of *Purānas* or the like, being busied on work which allows not leisure, fixes a day, two days, a fortnight, or a month ; and, promising to attend after finishing the work, departs on that business : the sacrificer, having consented *to wait*, must not engage another priest, but must defer his business for the time *limited*. But MISRA thus expounds the text : “ if any officiating priest be absent on account of business, let the sacrificer allow sufficient time *for his return*.” According to his gloss and reading, the sacrificer, estimating the time and occasion *of his absence*, should so long await *his return*. The meaning is, that, estimating the time required for the completion of that business which occasions his absence, the sacrificer should wait a little longer. On this opinion, absence, with the consent of the sacrificer, is not implied ; and this part of the text has the same sense with the preceding part : but there, the fee is noticed ; and here, it is directed that another priest shall not be appointed. The result is, that, in case of consent, it is necessary to wait a sufficient time, as is universally acknowledged ; and even without having previously consented, the sacrificer should,

if possible, wait the priest's return. According to MISRA, this is ordained by the law ; and according to the *Retnâcara*, it is *only* grounded on the reason of the law : but it is proper.

If a priest, after being engaged for a sacrifice, which allows not leisure, but should be performed on the day of full or new moon, or the like, absent himself on some urgent occasion, with, or without the assent of the sacrificer, what is to be done ? for the sacrificer cannot wait, since the rites are only proper on a certain lunar day ? To this question it is answered, " if he be hurried, &c " (XLI). " And the absent priest shall receive some trifle ;" he shall receive something as a token of respect ; since, not having performed any part of the work, he is not entitled to a share of the sacrificial fee. Or something shall be given to preserve due respect, merely on account of his engagement, when the priest, prevented by business from attending *at the proper time*, afterwards does attend : this also should be understood from parity of reasoning. CHANDÉSWARA thus explains the text : " let a man who understands the order of proceeding, cause the sacrifice to be finished by another priest ; and let the priest first engaged, who went to a distant place, and has been *therefore* forsaken, receive something from the sacrificer as a gratification : " that is, if the sacrificer could not wait his return. But MISRA says, if the priest be supposed to have died, &c. let the sacrificer cause the ceremony to be finished by another priest, and the sacrificial fee belongs to him ; but if the priest happen to return, let the sacrificer give him some trifle. If the priest went with the assent of the sacrificer for five days, and afterwards another priest, knowing that rites are to be celebrated at the expiration of ten days, happen to attend, the sacrificer may cause the work to be finished by that other priest : but, after his own assent, he should not, without a sufficient cause, engage another priest, at the instigation of *other* people, or from a motive of anger or the like.

A third rule is mentioned : " if the priest wilfully absent himself, though forbidden by the sacrificer, he shall be fined a hundred *panas* : " so MISRA and CHANDÉSWARA. From the insertion of two words, " wilfully " and " forbidden," it is inferred, that, if he be absent on account of urgent business, even though forbidden, he shall not be amerced : nor shall he be fined if he absent himself, even without business, but not forbidden *by the sacrificer*.

sacrificer. However, "not forbidden" may be understood as included in forbidden: thus, if he absent himself without giving notice to the sacrificer, and without business requiring his absence, even then he may be amerced. This is consistent with the reason of the law; for, as not forbidding is assenting, so it may be said that not assenting is forbidding. It follows from the context, that another priest may be engaged; and the sacrificial fee shall be received by him who performs the work, and it is not proper that a gratification should be given. If the officiating priest, though forbidden, absent himself after performing some work, shall he, or shall he not, receive the fee for that work? It is answered, the payment of a fine is declared, not the forfeiture of the wages of his labour: therefore he shall receive the fee for the work performed. If he only absent himself after his engagement, does he not receive a gratification from the sacrificer? There is no need of a gratification, since he is faulty. The appointment of priests is an essential part of the rites; but it is the act of the sacrificer: the acceptance of the appointment is no part of the rites. Let it not be objected, that the appointment may perhaps be unaccepted; and, if it be not accepted, the rites produce no benefit to the sacrificer; and thence it follows, that the acceptance of the appointment is a part of the rites. If they be completed, it is useless to admit it as a primary or secondary part: another priest is appointed; and his acceptance must be *supposed*. Absence does not here intend going to another province or another town only; but also going to his own house, and neglecting the performance of the rites: and if a priest engaged in one place, and, having undertaken the business, undertake other work in another place, leaving that business unfinished, it must be understood to be an offence, according to the circumstances of the case.

"Or if he be a grievous offender, &c." if the officiating priest be a grievous offender, &c. "Or" denotes another case. By this part of the text is denoted a man who was already a grievous offender; in the former part is intended an offender on that particular occasion. CHANDÉSWARA says, that one who was already a grievous offender is here intended: and this should be understood as admitted by MISRA. Thus, if that officiating priest, having received an appointment for solemn rites, wilfully
absent

absent himself, the sacrificer's family-priest, who selected persons to officiate, shall be amerced. It is the regular business of the family-priest to select officiating priests: or, in his default, a learned friend selects them. This meaning is deduced from the word family used in this place, and from such practice seen in hundreds of instances. But VÁCHESPATI says, "the spiritual preceptor, who invested him with the mark of his class, shall be amerced:" and the author of the *Retnâcara* explains the word family in another sense; "the priest, whose business it is to examine the families of the officiating priests, shall be amerced." No *essential* difference results from this exposition; the only difference is, that it has been noticed in the *Retnâcara*, that the officiating priest should be selected by the family-priest.

Others thus interpret the text; "the family-priest, officiating at rites, shall be fined a hundred *panas*, if he offend." Consequently the sense is, that, if the family-priest, though forbidden by the sacrificer, wilfully absent himself while the sacrifice is unfinished, he shall be fined a hundred *panas*. This was *also* directed by the preceding part of the text, but is repeated to show a fine if he absent himself, even though he have not been engaged *for a particular ceremony*. This construction will be noticed in explaining a text which will be quoted from NÂREDA (XLIII): but the former construction is proper, because it is delivered by authors, and is consistent with the reason of the law: therefore, should he appoint a grievous offender, he partakes of the offence. It should not be objected, that, if the offence were not previously known to the family-priest, how can there be a fault on his part? He is faulty, because he did not make particular inquiries: and if priests learned in law be selected by the sacrificer without knowing their defects, even then the family priest should make inquiries concerning faults, which may obstruct the rites; but if the sacrificer exclude him from that office, he is not in fault.

The word (*upâdhyâya*) is explained by MISRA, the appointed spiritual preceptor; AMERA explains it 'a teacher;' he from whom a disciple resorting to him (*upêtya*) learns (*adbîtê*) a science, is a preceptor (*upâdhyâya*); we apply it to any family-priest (*purôhita*). The grounds of this explanation are the mention of the word family: no person is teacher to a whole race or family;

nor

nor is it ordained, or customary, that the teacher should select the officiating priests: but the word *upādhyāya*, in hundreds of instances, signifies *purōhita*.

“ Afflicted by a disease,” which obstructs the rites, or prevents their effect. “ Of ill fame;” abandoned on account of some offence charged against him, and the like. “ Old;” and therefore unable to act. So CHANDÉSWARA. Therefore, if a priest be engaged, without any knowledge of his malady or other disability, and it be afterwards discovered, let the sacrificer “ favour him,” and, with his assent, appoint another priest. The sense is the same on the reading of CHANDÉSWARA; “ favour should be shown.”

The text declares an offence in wilfully deserting a sacrificer; but there is no offence in quitting him for urgent business: and if the sacrificer forsake a priest not diseased, nor otherwise disabled, nor absent, he shall be fined two hundred *panas*. “ Degraded,” &c. comprehends generally diseased, or otherwise disabled. It is proper to forsake persons who maliciously seek to injure the solemnity; or who, always finding fault, endeavour to spread ill reports; and other persons of similar descriptions.

“ Ignorant;” much averse from the study of the *Vēdas*, and unacquainted with the law concerning the rites at which he is to officiate, and with the rules concerning his part of those rites, and the like. If any covetous *Brāhmaṇa* officiate at sacrifices for men of low and mixed classes, for whom *Brāhmaṇas* do not usually officiate, the sacrificer, having admitted him, shall not *afterwards* reject him, however ignorant he may be. Or if any learned priest, tainted with a sin committed in a former existence, consent to officiate at a sacrifice for such a person, he should be forsaken *by others*, under the authority of the text, as a foolish man; but since his foolish transgression of duty was on that man’s account, he shall not be forsaken by him: but if the foolish man had *already* violated his duty on another occasion, there is no offence in forsaking him. This and other points may be inferred from reasoning.

A priest may abandon a man who gives not “ due rewards ” at the time of a solemnity undertaken in the previous expectation of reward. In the former part of the text it is said, that an ignorant priest may be forsaken: it must be understood, that a more

learned priest attends ; a man should not abandon an ignorant or foolish priest, and engage one more ignorant or foolish. In fact all this supposes knavery *or wickedness* : it is not proper to abandon an ignorant priest, without any misconduct on his part, and without the attendance of a learned priest : knavery must be understood as the ground of punishment.

The amercement of two hundred *panas* directed for the sacrificer who forsakes the officiating priest, and for the officiating priest who forsakes the sacrificer, is inconsistent with a text quoted from MENU in the *Vivāda Retnācara* and *Vivāda Chin-tāmeñi*.

XLII.

III
88
MENU :—The sacrificer who forsakes the officiating priest, and the officiating priest who abandons the sacrificer, each being able to do his work, and guilty of no grievous offence, must each be fined a hundred *panas*.

MISRA and CHANDÉSWARA reconcile the text, by saying, that “ there is no inconsistency, *since the fines are regulated according to the voluntary or compulsory desertion by a rich or a poor man.*” Consequently, a rich man, if the act be voluntary, must be fined two hundred *panas* ; but a poor man, even though the act be spontaneous, shall be fined one hundred *panas* only, because he is unable *to pay a greater fine*. By “ poor ” is meant ‘ unable to pay two hundred *panas*. ’ If he cannot pay a hundred *panas*, what is the consequence ? He may be acquitted by the surrender of all his property. Why has MENU mentioned a fine of a hundred *panas* ? Constructively, a greater sin being expiable by the surrender of the whole of a man’s property, it is unsuitable to say that a smaller offence is not expiated. Here no favour is shown to the sacerdotal class ; for it is a *Brāhmana* that deserts the sacrificer : and it must be so settled from the very relation implied in the desertion of a sacrificer.

Panas, though not specified in the text, are understood, from the necessity of satisfying the question, *of what shall the fine consist ?*

Where

Where the number is mentioned instead of the species, *panas* are commonly understood ; for many instances of this occur : and that designation, being mentioned in the texts of other Sages, is deduced from the coincidence of the rules. In this instance, the fine directed by SANC'HA and LIC'HITA is explained two hundred *panas* ; and the inconsistency of this text is removed by saying, that the two hundred *panas* above mentioned must be understood of wilful desertion by a wealthy man : but SANC'HA and LIC'HITA *also* direct, that an officiating priest, deserting a sacrificer, shall be fined two hundred *panas*. They direct, that an officiating priest absenting himself, though forbidden by the sacrificer, but without *absolutely* forsaking him, shall be fined a hundred *panas*. But it is consistent with the reason of the law, that the amercement should be fifty *panas* only, if he be poor, and his absence be involuntary. This, however, is not specified by any Sage, nor clearly expressed by any Author.

XLIII.

NÁREDA :—Officiating priests are of three sorts ; *the first, an hereditary priest, honoured by former generations with the employment of officiating priest ; the second, appointed by the party himself ; the third, he who voluntarily officiates on account of previous friendship.*

2. The officiating priest who abandons a sacrificer, though he be not a grievous offender, nor otherwise faulty, and the sacrificer who forsakes an officiating priest guilty of no grievous offence, shall each be fined.

3. This is the law for hereditary priests, and for those who are engaged by the party himself : but there is no offence in forsaking a priest, who, *unbidden*, officiates of his own accord.

“ Honoured

“Honoured by former men ;” honoured as officiating priest by former generations ; an hereditary priest.

The *Vivāda Retnācara*.

“The second, appointed by the party himself ;” one who is appointed, on the occasion of a sacrifice or solemn rite, to perform that *particular* ceremony. “He who voluntarily officiates, &c.” YAJNYADATTA, influenced by friendship or the like, and for the benefit of DÉVADATTA, pays adoration to his household gods ; or, at a time when he is impure, performs a sacrifice which should be performed by him ; or effects the sacrament of the son of an absent friend, even without his assent, to remove the evil which might arise from its not being effected ; it is to be understood of this and other cases. “*Nor otherwise faulty ;*” this may apply to both : by fault are intended blows, enmity, dishonour, and other faults already mentioned.

Who is an hereditary priest ? It should not be said, he whom the grandfather employed, and afterwards the father, and next the man himself. If the grandfather, being rich, employed ten millions of *Brāhmanas*, and the grandson, being poor, cannot employ so many priests, he would incur a fine. Some hold, that “hereditary officiating priest” supposes a specifick appointment in this form : “so long as my descendants and yours exist, shall you and your descendants sacrifice for me and my posterity.” It is the custom, that he whom the father called to all solemn rites, should officiate also for the son ; and the agreement above mentioned is not supposed. In fact, the appointment is made by saying, “be my priest (*purōhita*) ;” which implies a distinction opposed to an appointment in this form, “now accomplish my sacrifice :” and here the word “*purōhita*” signifies a priest employed for a long space of time. We do not determine whether the word “I” intend *the speaker* himself only, or his race generally. If it intend his race generally, there is no dispute ; because, when the father has agreed that DÉVADATTA shall sacrifice for his son, the son, forsaking him without a fault on his part, is liable to a fine : and this construction is consistent with the reason of the law. If the word “I” be restricted to the speaker himself, how should the son incur a fine by forsaking the priest ? Here proof must be brought from practice. A dispute arising on the subject of desertion by an officiating priest or by a sacrificer,

ficer, the first says, "I have been priest (*purôhita*) to the family for three generations;" *he does not say* "an agreement was made by his grandfather for the performance of sacrifice *by me and my heirs*, as long as his race should exist."

Is not such an agreement inferred from the performance of sacrifice for three generations without interruption; and does he not, for that very reason, plead the performance of sacrifice for three generations? No; such an inference cannot hold, since it is not the present practice for any person to make an agreement in that form. On this subject it is said the usage is ascertained, as implied by this text: thus, by saying "be my priest (or *purôhita*)," he is fully appointed to be priest *of the family* for a long space of time; and, whatever be implied, the priest so appointed by the father shall not be forsaken by the son, unless he be guilty of some offence. This, virtually, is the sense *of the text*.

A priest appointed by a man himself is of two sorts; appointed for a long space of time, or appointed for a particular ceremony. The rule varies in respect of these: it is an offence, under any circumstances, to forsake a priest appointed for a long space of time, unless he commit some fault; and it is an offence to forsake a priest appointed for a particular sacrifice, in the midst of that sacrifice.

In the gloss on the text of SANC'HA and LIC'HITA, prefaced by the words "others thus interpret the text *," it is intimated, that if the family-priest, or a priest appointed to that office by the sacrificer himself, should absent himself, knowing that a sacrifice is to be performed, though not engaged for it in the form directed by the law, he shall be fined; provided no person attends as his representative. From parity of reasoning, the sacrificer should be fined, if he refuse to employ his family-priest above described.

If sacrifice have been uninterruptedly performed by father and son, as family-priest, without an express appointment in this form, "be my family-priest," what is the consequence? Even in this case, the law concerning hereditary priests is apposite, since such an appointment of father and son is admitted by implication.

If hereditary priesthood be liberally admitted in favour of a priest

* See page 54.

priest engaged by the father for a long space of time, may it not be admitted in favour of the son of a priest so engaged by the father? Thus, a dispute arising on the subject of desertion between the grandsons of the sacrificer and of the officiating priest, the grandson of the priest may offer this plea, "his grandfather employed my grandfather in sacrifices, and the office has been uninterruptedly held by us from that period." It may be so: for he will better gain his cause by *proof of the performance of sacrifice* for several generations, than by the same *proof* for one generation only.

Such being the case, where the officiating priest has three sons, and the sacrificers, *or employers*, are three, a partition may take place; for, on this admission, the sacrificers, *or employers*, are similar to property. But if any one sacrificer refuse one of the priest's sons, what is the consequence? It should not be argued, that partition arising from the right of the priest's descendants to *officiate for the sacrificers, or employers*, under the authority of law and custom, the sacrificers shall be fined if they refuse their assent to the partition: and in this *last* case all shall be fined, since all are equally in fault. No one has mentioned a fine for parties refusing their assent to a partition. Nor should it be argued, that, since forsaking the son of a family-priest amounts to the forsaking of an hereditary family-priest, the abandoning of the family-priest is a cause of amercement. No Sage or Author has said so. To the question thus proposed, the answer is, they must be understood to be indivisible, under the text of VYĀSA (Book V, v. CCCLXIV); and the rational distribution, mentioned by VRĪHASPATI (Book V, v. CCCLXVI 6), supposes the consent of the sacrificers. Thus, if the sacrificers say nothing, they shall not be forcibly taken by one person. In fact, a distribution of sacrificers, *or employers*, though not mentioned by authors, may be adjusted by the king, on his own judgment: but a distribution by lots should be preferred.

In certain towns or other places, and for particular rites, the office of priest is hereditary in some families; and partition is there customary, and should be admitted in such instances. It is the hereditary office of some persons to deliver written instructions on the forms of penance and the like; in these instances also partition should be allowed.

*Agrahārica** priests and others, paying revenue to the king, hereditarily receive *tila* and the like; their right should be admitted on the same construction of law with *the right of family-priests*; or on the king's pleasure. As the king has property in the village, entitling him to receive revenue, so the *Agrahārica* and others have property entitling them to receive *tila* and the like. May not the king, having property, dispose of it at his pleasure; but can the *Agrahārica* do so? The king has not power to destroy the village *by oppression*; and his gifts and alienations are not incontestible. It is the same in respect of the *Agrahārica*. The king may *indeed* take the property of the subject, because he is lord of the land: however, as the king, though he have property in the soil, cannot take its *whole* produce, but has a title in a waif, though it belong to a subject; so he may take the property of subjects, though the *Agrahārica* and others have *also* a title in it.

If *tila* and the like be taken by the *Agrahārica* and others in right of a property in the village, the giver would have no benefit from the gift, any more than from the payment of the king's revenue. This is denied; property does not arise in the *tila* from the payment of the king's revenue, but a title to receive the *tila*. Property authorizing alienation at pleasure originates in actual receipt, founded on the title to receive from such peasants, and in actual delivery by the donors. Consequently, there is no difficulty.

It is doubted whether wives and others have a title to this succession, although the partition, founded on the admission of a right vesting in *Agrahāricas* and other officiating priests, ought to be similar to the partition of inheritance *in general*. As the wife's title to succession, on failure of heirs in the male line as far as the great grandson, will be declared under the head of Inheritance, what should reverse her title *in this instance*? It should not be argued, that the wife can have no right in the village, because, as a woman, she is disqualified for the performance of holy rites, and because the wives of *Agrahāricas* and others are totally incapable of receiving *tila* delivered as a gift to priests. The *tila* may be received, and the rights be performed, through the intervention

* Priests who attend at funerals. In some districts they are called *Mahābrāhmen*; in others, *Mahāpātra*, *Agradān*, *Prētiya*, *Cant'aha*, &c.

intervention of a substitute. Let it not be argued, that, were it so, a property in the sacrificial fee and *regular* dues would vest in the substitute. The wife may have the benefit of property acquired by the substitute, as a sacrificer has the benefit of rites performed by an officiating priest. However, there is this difference: the sacrificer acquires merit from rites performed by an officiating priest, and none is ever acquired by the intermediate performer of the rites; but if the duty of the officiating priest be performed by a substitute, property in the sacrificial fee is at first vested in the substitute, and, through him, in the widow entitled thereto. It is alleged, that there is no authority for this construction. It cannot, *it is said*, be argued, that the authority which forbids desertion proves a property in the village, since otherwise it must be irrelevant; hence property in the sacrificial fees and the like vests in the wife as owner, and afterwards is acknowledged to vest in the substituted priest, because otherwise the sacrificer's rites could not be complete: the law, *it is said*, does not declare it an offence to forsake the wife of an officiating priest; for she is an ignorant person. That is denied; because, the descendants of an officiating priest having the same right to the office which they have to inheritance *in general*, (on the admission of property in that office,) the forsaking of an ignorant person is limited to the actual performance of the rites. It is no-where seen, that, a wife and a daughter's son being left by an officiating priest, the wife shall be entitled to the remainder of the estate, and the daughter's son be entitled to the *perquisites of the office*.

If this argument be proposed, the answer is, the same text which declared that hereditary priests should not be forsaken, excepts ignorant persons: and that authority avails not, in this case, to confer property on one who is not a learned priest. As for what is alleged, that the wife is entitled to the wealth, and that there is no settled usage entitling the daughter's son to take the office; the parity between the wealth and the office may arise from favour shown by the daughter's son and by the sacrificers, or from mistake: usage alone is no authority, unless it be confirmed by construction of *express* ordinances.

On this point it is argued, that, as the rites cannot be performed by an ignorant or disabled person, the law directs that he shall be forsaken, intending that the rites should be performed by means

means of a substitute ; but the ignorant person has property in the sacrificial fees and the like, as the owner of a slave has property in the wealth acquired by the slave : and this construction should be settled on the strength of the admission of a property vesting in the heir. The text which ordains that “ a person unable to act shall appoint another to act for him,” is the foundation of this construction : but the property of an outcast, or other person disqualified for solemn rites, is absolutely lost, in the same manner with his right to the paternal gold, silver, and the like. This will be explained in the fifth book, On Inheritance. Wives and others, disqualified by sex for the performance of holy rites, cannot appoint a substitute ; as a defiled person cannot perform a solemn act ordained by the *Vēdas* : therefore wives have no property in the office of priest.

If the daughter of an officiating priest have a son, has that son a property in the office ? If the daughter's son have such a right, then should a daughter likely to bear a son, and a son of the maternal great grandfather's daughter, be left, he would be entitled to the office : but that is not supported by usage, nor by common sense ; and there would be no certainty in regard to what should follow, if a daughter's son be afterwards born. If it be said, the daughter's son has not such a property ; then the reason of the law is transgressed : for there is nothing to prevent the property of the daughter's son in his maternal grandfather's wealth, if it be not resisted by a right vested in some other heir, *the male descendant, the wife, or the daughter of the last possessor* ; and this office is absolutely similar to wealth.

The text which forbids the dismissal of an hereditary priest, does not imply that his heirs shall not be dismissed, but implies that a person appointed by the grandfather or other ancestor shall not be forsaken : thus no difficulty affects the terms of the text. That is denied ; for the practice is not such.

Therefore the difficulty is thus reconciled ; women are entitled to that only for which they are qualified. In regard to the assertion, that women, being disqualified, cannot appoint a substitute, this must be understood : being disqualified for solemn acts ordained by the *Vēdas*, they cannot appoint a substitute for such acts ; but, qualified for worldly acts, nothing prevents their appointment of a substitute for temporal affairs : and the right should

should devolve on the next in succession, under the text *quoted in another place* (Book V, v. 477), and because women are dependent on men. Grain and similar property may be consumed by a woman entitled *to the succession*; but gold, silver, and the like, should be preserved: if she cannot *guard it*, let it be intrusted to her husband's heir, as will be mentioned under the title of Inheritance. Here, since a woman cannot preserve the office, it should be executed by her husband's daughter's son, or other heir: but the produce should be enjoyed by the woman. However, should the daughter's son be at variance with his maternal grandmother, it may be executed by another person: he is not entitled to his maternal grandfather's property, if that grandfather leave a wife: and should the maternal grandmother litigate, it must be amicably adjusted.

The usage in regard to *Agrahāricas* and others has been briefly discussed. No more express ordinance is found to determine, consistently with usage, the suits which arise on these subjects. If ordinances alone be received, there is no authority for establishing the right of their heirs: and many excellent persons do not admit the rules of inheritance in these cases.

“There is no offence in forsaking an *unbidden* priest who officiates of his own accord (XLIII 3).” The word is interpreted *officiating* priest in the *Vivāda Retnācara* and *Vivāda Chintāmeni*. If any *Brāhmaṇa*, of his own accord, attempt the performance of holy rites for any person, and that person, when informed of it, forbid him, the sacrificer shall not be amerced *for subsequent desertion*. But it must be considered, that, if the sacrificer, though informed of it, have not *at first* forbidden him, but afterwards, when some part of the rites has been performed, do forbid him, he shall be amerced; for, not to forbid, is to assent: under this rule, *his silence* amounting to full assent, the priest is absolutely appointed by himself, and it would be improper to dismiss him from that ceremony. Though it be not mentioned by authors, this is consistent with common sense.

LXIV.

VRĪHASPATI: — They are declared to be of three
forts;

sorts; coming of their own accord, hereditarily employed, and appointed by *the sacrificer* himself *for that turn*: even so should the business be performed by them.

“They;” meaning officiating priests. “Coming;” voluntarily *officiating*. “Hereditarily employed;” appointed by former persons. “Even so should the business be performed;” that is, the rites should be performed as above mentioned. Such is the sense of *the text*. But some consider this text as intending concerns among partners in general: thus, the sense would be, partners are of three sorts; accidentally entering into partnership, hereditarily engaged, (as a son after the death of a father, who was engaged in partnership,) and engaged by *the party* himself (that is, called in by him at the commencement of the undertaking). “Even so,” &c. that is, the business should be adjusted in proportion to the shares, whether equal, less, or greater.

Here it should be considered, that, if five teachers be engaged to read holy books, and one expound the verses, and all the rest be reciting readers, gratuities are separately paid to each of them; and something is given by strangers who hear the recital, to the expounder of verses and the rest, either for the benefit of hearing, or from the satisfaction which their skill in recital affords: and, according to ancient and excellent usage, strangers as well as the employer give something respectively for particular stories; such as the story of LACSHMANA’S eating *after his long fast*, in the recital of the *Rāmāyana*; and the story of the dwarf’s begging alms, in the *Srī Bhāgavata*; and the marriage of DRAUPADI, in the *Mahābhārata*. In such cases, what is received both by the readers and the expounder should be *distributed* in shares; but what is given on account of peculiar excellence, or skill in recital, belongs to him to whom it is given. The shares should be distributed according to the number of readers; and the expounder shall have a half, a quarter, or some other share. At present such a custom subsists in some countries: though not declared by the law, it should be admitted on the strength of custom.

In this case, should the expounder obtain any thing by the error of introducing a more excellent *story* on a less excellent occasion, (as LACSHMANA eating *after his long fast*, in the recital of the story of the *Mahābhārata*,) what is the rule? The answer is, if the readers assisted in the mistake, the distribution should be made as in the preceding cases; but if they did not assist in it, the whole belongs to the expounder; or if some of the readers did assist, they are entitled to shares of the reward, and the shares should be distributed according to the number of persons concerned.

From the mention of former persons, or generations, it must be understood, that the family-priest of the paternal grandfather, being superior to others, not the priest of the maternal grandfather, should never be forsaken; but should there be no paternal family-priest, or no paternal wealth, and the man succeed to his maternal grandfather, then it is proper that he should employ his family-priest. This, however, is merely an induction of common sense, not the import of the ordinance.

The known customs at holy places, such as *Gayā* and the like, and in other countries, should be maintained in judicial procedure.

SECT. III.—On Partnership in Loans, in Husbandry, in Arts, and in Plunder.

XLV.

VRĪHASPATI :—The profits of those who *jointly* lend gold, grain, liquids, or the like, shall be proportioned to their respective shares of the outlay, whether equal, or more, or less: thus is the law settled.

2. Whatever property a man lends, with the assent of many, or whatever business he *so* causes to be performed,

performed, is considered as the act of all the partners.

Advance, or "lend," is explained in the *Retnâcara*, make a written contract with a view to gain. A joint loan on interest is intended: the profits shall be proportioned to the shares in the principal loan; and the same must be understood of loss: this is the settled rule and practice. What is lent to any person, with the assent of all the partners, is lent by all: and a contract which one partner makes with the assent of all, or his acceptance of a written contract of debt from a debtor, is considered as the act of all. Consequently, they all share the gain or loss on that loan; and the borrower, by that written contract, becomes debtor to all the partners: therefore, should any one of them adopt compulsory means for the recovery of the debt, he shall not be punished.

XLVI.

Among persons bound jointly and severally, whoever is found may be compelled to pay the debt*.

As a debt must, under this text, be paid by any one survivor among several debtors jointly bound for the same debt; so any one survivor among several creditors jointly advancing a loan, may, consistently with the reason of the law, recover the whole debt: but the heir, or the king, not the partner, *ultimately* receives the property of the deceased; for the case is parallel to that of partnership in trade. How then may one survivor recover the whole property? If he recover not the whole, the heir of the deceased, or the king, might take the share belonging to the deceased, out of the proportion which the survivor recovered as his own share: therefore, he should endeavour to compel payment of the whole debt. But if the debtor declare, "this I pay thee for thy portion, the shares of the rest shall be paid hereafter;" the portion of the debt received by the survivor cannot be taken from him by any other person. It should not be argued, that, the recovery of a debt due to joint lenders being requisite,

quisite, like the payment of a debt due from persons jointly bound for it, he shall be amerced if he neglect to recover it; but it is necessary that the heirs of the deceased should assist in the recovery of the debt. If the heirs assisted in the recovery, the debtor could not say, "I now pay thy share:" however, a penalty for not demanding the debt will be mentioned. It should not be argued, that, if the heirs of the deceased reside in another province, then, not being present, they cannot make the demand: the debt should therefore be recovered by the survivor; and if he accept his own share alone, he shall be amerced. The case being parallel to that of partnership in trade, it is necessary that the king should assist in the recovery of the debt: and here the demand of *payment* is similar to the custody of stock, in the case of partnership in trade. But if the king violate the law, is there any fault on the part of the heirs, that the loss should ultimately fall on them? No ordinance expressly requiring that it be recovered by the partner, it is a settled rule that the loss must be borne by the heirs. But, in fact, according to MISRA's exposition of the text of NĀREDA (XIX), the debt should be recovered by the partner, as the stock should be preserved in the case of partnership in trade. To neglect it, though able to recover it, is an offence; and the person who recovers the debt may receive a tenth part of it, as in a case of salvage.

When a loan on interest has been jointly advanced by five persons, if one die, and his heir be present, the heir should conclude the transaction: but if the successor reside in another province, then indeed the surviving partner should give notice to the king through the means of his officers, and the king should depute thither an officer appointed by himself; but if the king omit it, the partner in the loan should conclude the transaction, and send notice to the heir, that he may attend: however, should some cause prevent him from doing so, the partner may follow his own choice; no offence is thereby committed.

If the king conclude the transaction, he shall receive, in the order of the classes, a twentieth part from the property of a *Brāhmana*, a twelfth from that of a *Cshatriya*, a ninth from that of a *Vaisya*, and a sixth from that of a *Sūdra*. The case must necessarily be held similar to partnership in trade. Thus, in answer to the question, "who shall perform his duty if one partner

partner die?" the rule is propounded, "on failure of heirs, the king;" for that is shown in the case of partnership in trade. Is a tax to be paid to the king in consideration of his executing the business? In answer to this question the rule is set forth, "let the king receive a sixth part, &c." (XXII 1). But if it be foreign to the king, the difficulty is reconciled from the text before cited; "or, if there be no heir, another partner who is willing and able to act; if there be no such person, all the partners;" (XIX). However, should the king forbid it, his commands must not be disobeyed: the king forbids not any thing without a special cause.

XLVII.

VAIḤASPATI:—To a paternal or maternal kinsman, and to a friend, a loan may be made on a pledge only; to others, with a surety, or on a contract written or witnessed.

This text belongs to the general title of Loan and Payment; for the reason of the law is equally apposite *in all cases of loan*.

If one of several partners in money-lending, being skilled in business, ask, "shall I singly advance a loan to the proposed borrower?" in that case, should they assent, the loan advanced is lent by all the partners; as is declared by the preceding text (XLV 2). In what mode should the loan be advanced? in what case? The legislator replies, "to a kinsman, &c.;" to any kinsman or friend of the partners, it should be advanced on a pledge, and one of sufficient value should be taken (Book I, v. XI). The grounds of the law are these: if the kinsman do not repay the loan, but say, "I cannot now repay it;" compulsory means would be a breach of the regard due to him, and therefore the debt may be irrecoverable: but if a pledge be taken, the debt may be recovered, by the sale of it at the expiration of the stipulated period, or at the end of eighty months or the like. From others it is not necessary that a pledge should be taken; he therefore mentions two modes, according to the honesty or dishonesty of the man, "to others, &c.:" in default of a surety, a loan

may be advanced to a dishonest man, on a contract written or witnessed.

XLVIII.

VRĪHASPATI :—At pleasure, or *without a time limited for payment*, may gold or silver be lent; but liquids and grain, for a limited time; by the custom of the country must the loan and the payment be regulated.

At pleasure, with or without a time limited for payment, may gold or silver be lent; but, for liquids and grain, a limited time is necessary. The *Retnācara*.

The time must be regulated by the custom of the country; and the payment must be regulated by the time agreed on. Under the text of HĀRĪTA, (Book I, V. xlv 2,) grain is doubled at the time of harvest; but if no time have been limited, it is not more than trebled even after a hundred years: therefore grain should be lent for a time limited to the next harvest; and if it be not repaid at the stipulated time, it may bear wheel-interest. But interest is receivable on gold, silver, or the like, at the *monthly* rate of an eightieth part; therefore it daily accumulates at that rate. Afterwards, when the debt is doubled, it should be recovered, or wheel-interest be stipulated.

XLIX *.

VRĪHASPATI :—After the time for payment has past, and when the interest ceases, *on becoming equal to the principal*, the creditor may either recover his debt, or require a new writing in the form of wheel-interest.

On grain, though not paid at the time of harvest, interest is *not considered as having ceased, because it has become equal to the principal,*

* Book I, V. cclv.

principal, and therefore wheel-interest does not arise; but if a time were limited, wheel-interest may be required. Interest on liquids is similar to that on grain; for, in the sequel of the text, HÁRITA ordains, that "on clarified butter, salt, and raw sugar, the interest may make the debt octuple:" and this follows from the exposition of the *Retnācara*, on the text of HÁRITA. As grain is doubled at the time of harvest, and, if the debtor cannot then repay it, is trebled, and not more; so is wool and cotton: but the fibres of grass, clarified butter, salt and raw sugar, in one year, became octuple. Therefore the exposition of the *Retnācara* on this text should be admitted. But reference is made to the custom of the country: a loan should not be made in such a form, in a country where such a custom exists not; for this text is superseded by the text of NĀREDA (Book I, V. xlv 1). In some parts of the country, grain is received back with an increase of half the loan; in others, with an increase of a quarter: the loan and payment should be so regulated.

It must be considered, that if a partner make a loan, in contradiction to this law, at his own pleasure, without a pledge, and without a time limited for payment, he incurs blame, as appears from the tenor of the text: but if the other partners consent to his making the loan at his pleasure, there is no offence. Yet if a loan be made to a kinsman without a pledge, and he endeavour to discharge the debt, but happen to be drowned with his family, the lender is not free from blame. Such is the method suggested by common sense.

But some hold, that this text does not declare an offence, but shows how a loan should be made. That is wrong; for, were it so, the text should have been inserted under the title of Loan and Payment, immediately after the text there quoted (Book I, v. XI).

L.

VRĪHASPATI:—What has been lent by two or more jointly, must be jointly demanded by them: any one of such lenders, who refuses to join in the demand, shall forfeit his share of the interest.

If any one of the joint lenders ask, "shall a loan be made to this proposed borrower?" In that case, if the others say, "we will jointly lend it," let all *subsequently* join in the demand of what has been so lent: but if one, though able, do not join in the demand, he shall forfeit his share of the interest. But if the authority for making or refusing loans be committed to one person, since it becomes his part to demand payment, and the act was done with a view to gain, it is not fit that another, who does not join in the demand, should forfeit his share of the interest.

LI.

VRIHASPATI:—The law concerning loans has been already propounded, and *therefore* it is now concisely delivered; hear the rules for husbandmen and others, which are thus declared:

2. Prudent men conduct cultivation, in partnership with those who are equally provided with beasts of burden, labourers, feed, land, and the implements of husbandry.
3. *They should not cultivate* common pastures, places reserved for cattle, nor the king's highway; let them purposely avoid barren land, and fields infested by vermin:
4. Sowing, at the proper season, land well situated to receive and retain water, capable of irrigation, surrounded with fields, and well tilled, the cultivator will enjoy a produce.
5. Let no prudent husbandman admit lean cattle, old, undersized, diseased, vicious, blind of one eye, or lame.
6. He by whose deficiency in cattle and feed a loss happens in the joint cultivation, shall indemnify all the cultivators:

7. This

7. This ancient rule has been declared for husbandmen.

The law concerning loans has been already propounded, under the title of Loans and Payment; now, therefore, in declaring the law of partnership in loans on interest, it is concisely delivered: such is the meaning of the text. Consequently the various cases of pledge and so forth, which have been delivered under the title of Loans and Payment, must be also understood under this head: therefore, should a pledge be destroyed by the fault of all the creditors, it must be made good by all, and so forth. But, should the pledge be destroyed by the fault of one of the creditors, it must be made good by him; and if it be destroyed by the act of God, it is the debtor's loss. These and other rules should be considered as inductions from the reason of the law, or from express ordinances. Again: if the debtor die, the property may be recovered from the surety; but, in this case, if any one of the creditors, from a motive of tenderness or of knavery, release the surety, the fault is his. This and other rules should be admitted.

"Hear the rules;" that is, what should be done by husbandmen and others. "Beasts of burden;" oxen. "Labourers;" servants employed in the business of husbandry. "Seed" fit for producing vegetation; in common acceptation, it signifies grain and the like. "Land;" fields on which grain is sown. "Implements of husbandry;" ploughs and the like. Agriculture should be conducted in partnership with persons who are equally provided with these requisites, that no dispute may subsequently arise, because less has been contributed by one partner than by another.

A portion of land reserved for grass is called "a common pasture:" so the *Retnâcara*. Neither a common pasture, nor a place reserved for cattle, nor the king's highway, *should be cultivated*: as is inferred from what precedes. This is merely an incidental command respecting agriculture; it is not here supposed to become a subject of litigation. Or it may be thus explained: if a man unite with one who cultivates land reserved for cattle, the king may say, "why dost thou cultivate land reserved for cattle?" If it be answered, "by his partner's directions;" he may be reproved in these words, "shall the town be destroyed by thee, because

cause he directs it?" Therefore partnership should not be formed with a man who thus transgresses the law, and it is an offence in the partners who share profit obtained by this breach of rule.

"Barren land" does not even support the vegetation of grass; how should grain be raised there by the utmost labour? From the number of small cells, "land infested by vermin" affords no produce, and the ploughs and other implements are much injured: therefore partners in husbandry should avoid such land; or a man should avoid it, lest, on seeing the produce small, he be reproached with not having well tilled his field. This is a direction to husbandmen to avoid an unproductive soil.

Low land, capable of receiving much water, and whence the water is not early drained; such clayey soil, surrounded with fields on all sides (that the trespasses of cattle may be prevented without trouble), and well tilled at the proper season, in the month of *Māgha* and so forth: the terms are so explained in the *Retnācara*. This text is an incidental direction for agriculture. Or where five persons jointly undertake cultivation with their own cattle and seed respectively, and agree to divide the produce after paying the king and others their due proportions of the produce, the text is applicable to such persons; therefore they should furnish equal proportions of seed: and where *Brāhmanas* or others jointly undertake agriculture on their own fields and with their own seed-grain respectively, and the agreement is nearly the same with that above mentioned, the text is applicable to them. In the first case, let the partners in husbandry cultivate land other than common pastures and so forth; two verses (LI 3 and 4) are intended to direct this: a direction concerning land and so forth was necessary for partners in husbandry. Both verses, propounding the mode of distinguishing land, are intended to show, that, in the third case, the land should be equally good. At present it often happens that men join in cultivation for the produce of their own fields only. The direction concerning land is here a repetition of the subject of cultivation: some additional meaning is intended; that is, perfect equality is not required.

"Lean cattle, &c." This text is applicable to the three cases*, and

* Cultivation by a single husbandman on his sole account; by husbandmen renting land in partnership; by the separate owners of land tilling the whole in partnership.

and is intended as an instruction to *husbandmen*. Thus, he who purchases cattle in the intention of cultivating land, should purchase such as are different from what is described in the text. It is incidentally mentioned; for if he possess not the price of excellent cattle, he may even accept such as are there described, to employ them on his business. If the cattle, and so forth, belonging to all the partners in husbandry, be bad, they may in that case be admitted; otherwise husbandry could not be conducted in partnership, were the cattle and so forth belonging to every partner bad: and it is indicated by the expression "who are equally provided, &c." (LI 2). The exception against the cattle described removes the doubt, whether cattle, being equal in number, may be admitted, though unequal in strength and other qualities: therefore parity is required, according to circumstances, in strength, qualities, and number.

In the second case, the text, as explained in the *Vivāda Chintāmenī*, directs, (V. li 6), that the loss shall be sustained by him through whose want of materials the field has lain fallow. Thus one partner is appointed to sow one field, and the other partners being similarly appointed to *different parts of the joint business*, if the field remain unsown by the fault of the cattle belonging to one partner, and cannot, from the excess of rain, be sown on a subsequent day, and the field therefore remain fallow; in this case, grain equal to the produce of similar fields shall be deducted from his share; or if seed furnished by one partner be sown in a field cultivated by all the partners, and no plants vegetate, the seed being old and bad, in that case also it is his loss. In the case where the partners join in the cultivation only, if the field of one remain unsown, from the fault of another's cattle, he is entitled to receive, from the owner of the cattle, the *estimated* value of a crop from that field.

If one of the partners in husbandry be unable to act, his task should be finished by another person; for YÁJNYAWALCYA says, "this law is declared for partnership among priests who jointly officiate at holy rites, and among husbandmen or artificers" (XXXI). The shares should be distributed in proportion to the cattle or things furnished; and seed and the like should be taken in proportion to the quantity of land or the number of cattle: but if the proportions of seed and the rest be unequal, the adjustment should

should be made on their value, otherwise there can be no certainty in regard to the shares: however, should there be a specifick agreement for unequal shares, the distribution must be made accordingly. All should join in preserving the field and the like: if one refuse to contribute to its preservation, he shall forfeit his share of the profit: and profit is thus ascertained; “what remains over and above the price of cattle, seed, &c.” If one preserve the common stock by the utmost exertion, he shall receive a tenth part of it. Him who has recourse to fraudulent ways, let the partners expel without profit (XXXI): consequently, should a fraud committed by one of the partners be detected after the land belonging to all the partners has been sown in the month of *Bbûdra*; in that case, restoring to him his stock in seed, cattle, and the like, and giving him half the produce of his own land, let them expel him: but if they cultivate in partnership the king's land, the payment of half the produce to the partner expelled is not admitted. Should one of the partners die, let the king, or other person, according to circumstances, keep his share of the stock, and deliver it to the heirs *when they appear*. All this, premised under the head of Partnership in Trade, must also be understood in this case.

LII.

VRĪHASPATI:—A manufacturer of gold *and silver*, of baser metals, of thread, of wood, stones and leather, or a man who is skilled in minute discrimination, is called, by the learned, *‘silpī*, or *artisan*:

2. And, when goldsmiths and the rest exercise their arts jointly, they shall receive pay in due shares according to their work.

One reading gives, “a manufacturer of gold, silver, and leaves,” that is, leaves of the palm-tree and the like. **CHANDÉSWARA** reads “thread,” (*sūtra* instead of *patra*.)

“A manufacturer of gold and the rest;” one who alters the form of the substance; who works it up, from a *shapeless* lump,
into

into ornaments or the like. "Skilled in minute discrimination;" well acquainted with minute parts; able to distinguish the portions of copper or silver contained in gold and so forth; discriminating the smooth and good parts of leaves, wood, and the like; or minutely acquainted with the natural qualities of the substances, and able to distinguish them.

Manufacture and such minute discrimination are severally called arts; but both united constitute superior art: thus, if some goldsmith knows not the assay of gold, but makes ornaments and the like, he is an artisan; and so is one who does not manufacture, but assays gold: and herein many unite; because many are required to confirm an assay. It is objected, since there can be no joint exertion in assaying gold and the like without property, there can be no separate head of Judicial Procedure; therefore the *specifick* mention of this was superfluous in discussing the title of Concerns among Partners. It should not be answered, when several persons are jointly employed in assaying gold belonging to any man, there is partnership: were it so, it should be mentioned under the title of Non-payment of Wages, for they are hired workmen. Nor should it be argued, that "skilled in minute discrimination" is not an independent term, but an epithet of "manufacturer," and that the sense is, "a manufacturer of gold and so forth, if he be skilled in his art, is called *silpi*, or artisan." Were it so, a manufacturer unskilled in his art, not being *expressly* mentioned, would be excluded from this head of Judicial Procedure: if skill must necessarily be supposed in all manufacturers, the epithet is superfluous; and it is irregular to employ it as a descriptive, *and consequently superfluous*, epithet. Nor let it be argued, that persons who are skilled in assaying buy and sell gold and the like: by their skill in assay distinguishing bad gold from good, they buy cheap and sell dear; and thus the mention of skill in assay has a reference to stock. Were it so, this would fall under the head of Partnership in Trade. To the objection thus proposed, the answer is, when gold or the like is intrusted to a goldsmith to work into ornaments and the like, and he receives hire in proportion to the *specifick* quantity ascertained by weight or otherwise, he is called a workman, but of a different description from those named in treating of slaves and hired servants. Some persons assay gold and the like for many different

different traders; they are not the particular servants of any one man, but receive pay in proportion to the specifick quantity ascertained by weight or otherwise, and are called artisans: at present such persons are often seen in the employment of sorters of money. From the practice of such a science, do they become artisans? This, like the manufacture of ornaments and other arts, not being included among the eighteen sciences, should be considered as a mechanical art.

Thus some expound the text. Others explain the term "skilled in gain," that is, well acquainted with the wages due to his labour; and this knowledge is an excellent qualification for an artisan. The sense is the same on the reading of CHANDÉSWARA and others; "well knowing the fruit of his labour" (*phalābhijnya*, instead of *calābhijnya*).

JITENDRIYA, HELAYUDHA, and VACHESPATI MISRA read "baser metals" instead of silver (*cupya* instead of *rūpya*). There is no material difference. Leather is in the plural number to imply other substances; for rope, balls of silk, bones, and other things must be understood, according to the circumstances of the case: otherwise, there would be no particular rule for such arts.

"According to their work" (LII 2): according to the work performed by four partners respectively, they shall receive their respective shares. For example, one melts the metal; another hammers the mass of gold or the like into the form of ornaments; a third folders the parts; and a fourth prepares the parts to be foldered. They shall receive pay according to the work thus or otherwise distributed.

LIII.

CĀTYĀYANA:—If four artisans be jointly employed, a young apprentice, a more experienced scholar, a good artist, and a teacher, they shall receive, in order, one share, two, three, and four shares, of the pay *divided into ten parts*.

These four (the apprentice, the scholar, the artist, and the teacher,) are distinguished by their skill in manufacture.

The *Retnācara*.

There-

Therefore, the pupils who melt metals, and so forth, under the directions of a teacher or other artist, receive one share; and the pupil should neither be the apprentice of another, nor one maintained by the instructor himself: consequently there is no contradiction to the text, which ordains that the teacher shall receive the gain on his pupil's labour (Book III, Chap. I, v. 20). But some hold, that the pupil's share is mentioned in contradistinction to the more experienced scholar and good artist, and that the pupil's share shall be received by the instructor.

The more experienced scholars, already taught, execute coarse work; they are inferior to the good artist, because they are unable to execute fine work. The good artists, having acquired experience, and being already skilled in manufacture, execute fine work, such as foldering the parts: in short, they nearly accomplish the business. The teachers instruct all the workmen as pupils; or, equal to the good artists, they also know the quantity of the parts, and are therefore in so much superior to them.

If there be an apprentice and teacher only, and no experienced scholar or good artist, what is the rule in that case? Who executes the work of the experienced scholar and good artist? If the apprentice do it, he is an artist: therefore the teacher should receive four shares; and the artist, three shares of the pay divided into seven parts. If he do not cause him to execute the work of a good artist, the teacher should be punished. But if there be a specifick agreement in this form, "thou shalt only perform the work of an apprentice," the work of the experienced scholar and good artist being executed by the teacher, he shall receive nine shares; and the pupil, one share only. If the apprentice execute the work of an experienced scholar, and the teacher perform his own part, and that of a good artist, the apprentice shall receive three shares; and the teacher, *seven shares of the pay divided into ten parts*. In fact, the definitions of apprentice and the rest are delivered in conformity with the etymological sense of the terms; but he who, under the directions of another, any-how executes work with occasional mistakes, is an apprentice if he be subordinate to another. He who previously instructed, but, from want of practice in the particular exertion of manual labour, being incapable of fine work, executes business slowly, is called

“a more experienced scholar.” He who is capable of executing work, and is practised in the application of manual labour, but sometimes has occasion to ask instructions, is called a good, a skilful, or an able artist. But the instructor, like a teacher of the *Vēdas*, directs others, and can accomplish the work with certainty. In this mode should the law be interpreted: consequently there is no definite work for the apprentice and the rest.

In this case, hire, salvages, and so forth, must be understood as in partnership among traders: and if any thing be destroyed by the fault of one among four persons, it must be made good by him; the owner should not refuse to pay the wages of all the workmen. But if any thing be taken on a false pretence, in the presence of the teacher, who brought the good artist and the rest, the wages of all the workmen may be withheld; and the others shall receive their shares of pay from the teacher, or from the person in fault. This and other cases must be understood.

LIV.

VRĪHASPATI:—Where several men jointly build a house or a temple, or dig a pool, or make utensils of leather, let the chief workman receive a double share of the pay.

“The chief workman;” the principal workman.

The Retnācara.

Some remark, that distinct shares, directed for four persons (the apprentice and the rest), should be understood of work other than the building of a house and the like: for VRĪHASPATI has not ordained such a distribution in the case of a house and so forth; but the principal workman employed in the building of a house and the like, shall receive a double share, and the others equal shares of the pay. But that does not coincide with the *Retnācara*, where it is said, ‘the text of CĀTYĀYANA (LIII) supposes one person giving, and another receiving instructions; in other cases the chief workman shall receive a double share: and thus there is no inconsistency.’ Therefore, should an experienced

perienced scholar and a good artist only join in the work, without one person giving, and another receiving directions, the rule follows the text of VRĪHASPATI. The presence of persons giving and receiving directions does not suppose a teacher and pupil, but a workman of little skill, and another of great skill.

The meaning consequently is this: first mentioning the manufacture of gold, silver, cloths and so forth, and afterwards the building of a house, the legislator answers in the last text (LIV) the question which arises on the former text (LII); "how shall pay be received according to the work in all cases, whether it be the manufacture of gold, or other work?" In all cases, whether it be the manufacture of gold or other work, the chief workman shall receive a double share of the pay: and the text of CĀTYĀYANA is irrelevant. It should not be argued, that the text of CĀTYĀYANA relates to cases other than the manufacture of gold and so forth; for the *last* text (LIV) provides for other cases. Nor should it be argued, that both the texts of VRĪHASPATI are reciprocally illustrative of a general sense, but do not comprehend other cases. Were it so, that would be derogatory to the Sage, since a law must exist in regard to work not mentioned in either text. It is said, the first text (LII 1), interpreted in the same sense with the text of CĀTYĀYANA, may be a declaration of the law for the case where four artisans are jointly employed; and the last text (LIV), where two workmen are employed. It should not be objected, that a different mode of partition is incongruous, because leather is mentioned in both texts. There may be different modes of partition, the last text intending ornaments or utensils of leather, and the first, other manufactures of the same material: thus, when a covering of leather for a car is ordered by the owner, if one workman be skilful, and others be also employed, the chief workman shall receive a double share of the pay. To this proposed exposition the answer is, it does not seem reasonable to destroy the concordance between two texts of VRĪHASPATI's own code, *merely* for the purpose of reconciling one of them with the text of another legislator. In fact, since there can hardly be persons receiving and giving instructions in the building of a house, or the digging of a pool, and the like, the

rule of distribution between two workmen might be suggested ; but, four persons being required for the manufacture of ornaments, the rule of distribution among four is proper : and this results from what is said in the *Retnâcara*. Thus, in building a house, one man carries the bricks and other materials ; but another, being an intelligent workman, constructs the edifice : so, in building a habitation of grass and wood, some person brings and throws up the grass, wood, or other materials, and another constructs the house. In digging a pond, one digs the spots which are marked to prevent inequalities, or notices what should be taken or left by all the workmen ; the others dig after him. In making utensils of leather, one sews the leather ; the others, as pupils, stretch it. Is there not employment for four persons in building a house, as well as in making ornaments ? Thus, one carries the bricks ; another removes their inequalities, and fits them for the pillars or other uses ; another again cements them in their proper places ; a fourth, to raise a straight wall of masonry, causes the bricks to be placed properly : in a building of grass or wood, one man carries the wood ; another cuts away rotten parts with an axe, and fits the wood ; a third, by labour, joins two timbers ; a fourth lines the wall. In all three instances, reference may be made to skill in work : and the same may be understood of other work, as the case may be. To this question the answer is, if it be so in regard to the wall, still there is no employment for four persons of different descriptions, in roofing the house, nor in constructing a house of bamboos, or building a house with unburnt bricks. In the text above cited (LIV) the term “ house ” intends such houses. But where there is employment for four persons, the former text (LII 1) is applicable : and this is actually said by the author of the *Retnâcara* ; ‘ the text of CĀTYĀYANA supposes one person giving, and another receiving, instructions : ’ and the same should be understood of other cases. If three persons join in work, then the distribution should be settled in this form ; for the rule is admitted, because they are included by their employments in the descriptions of apprentice and so forth.

Thus some expound the law. In some provinces it is the practice, in regard to the roofs of houses, to give the same pay to the man who throws up the grass, and to him who makes

fast the string, but less than the pay of the thatcher: and in building houses of masonry, greater wages are given by the owner to one employed as chief workman, than to the others who assist him; but other labourers again carry the bricks, and perform the rest of the labour. This and other usages subsist. There can be no benefit from expatiating on the subject; for, wages are paid according to settled usage, and workmen are employed on special agreements. So much has been said to explain the law: it should be received as above explained.

LV.

VRIHASPATI:—This has been ordained by wise legislators for a band of musicians: let him who marks the time skilfully take a share and half, and let the fingers have equal shares.

“He who marks the time skilfully” (*tāla*); “*tāla*” is explained by AMERA, measuring time and performance: that again is explained in the commentary on his dictionary, the measure of the appointed time of utterance, one or two moments; and the discrimination of exact performance. Consequently, in the case of singing, the utterance of certain letters *or syllables* of the song, after once, twice, or thrice uttering certain other letters *or syllables*, is measurement of time, and called *tāla*: in fact it signifies measuring the time during which a word or sound must be held, and the time when another syllable should be uttered after the utterance of that sound; as in the verse of the *Gītāgōvinda*, “*Herir iha mugd'ha bad'hū nicarē vilāṣini vilasati cēliparē**,” a momentary pause is made at “*herir iha*,” and the sound of the last syllables of “*badhū*” and “*nicarē*” is prolonged during the twinkling of an eye, or during half that time, or during a very minute space of time: this is called measuring time. Measure of performance consists in regulating the effort of the singer with his tongue or other organ of speech to utter the letter or syllable:

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* *HERI* exults in the assemblage of amorous damsels. Asiatick Researches, vol. iii. pa. 187. Or, as verbally translated by the same hand, *HERI*, O my amorous friend, delights in the highest of pleasures, in this assemblage of beautiful damsels.

the intimation of it by a contemporary stamp of the foot on the ground, or by clapping the hands, is called (*tála*) beating time. Though all the common acts to be done by the dancer, the musician, and the rest, with the utterance of low sounds, be not indicated, nor even the performance of loud musick, yet the step or gesture corresponding with a difficult passage is marked; how is the performance of a dancer and the rest measured? By the word "performance" steps and so forth are signified: consequently the hint to perform a certain step or gesture at the same time with the utterance of a certain sound, with which sound it ought to be performed, is the measure of performance, and is called *tála*: measure is in this instance explained discrimination, and that consists in distinguishing the parts of the performance to be executed at a certain time, namely that a certain act must be done immediately after a certain time: this is mentioned as suggested by the single term of "fingers." But, in fact, whatever act is to be done, or sound to be uttered, immediately after a certain time, and whatever stroke on the ground or the like with hand, foot, and so forth, is to be given during the performance of musick at a certain time, according to the laws of musick and singing, the notice of that time, or hint for the performance, is meant by "measuring time and performance." Consequently beating time *and prompting* is applicable to singing, playing, dancing, and so forth.

Was it not superfluous to say, "let the fingers have equal shares;" for that was already suggested by the allotment of a share and a half to him who marks time skilfully, since the marking of time belongs to singing only? No; for the term "marking time skilfully" denotes one who is skilful in marking time. Consequently he who teaches the rest to observe time skilfully, is denoted by the term. In this country such a man, in singing and the like, is the man who begins the song; for the rest sing as they are instructed by him, and the musician also plays the musick adapted to that song. In dancing and the like, a musician is sometimes *the leader of the band*; sometimes a dancer *leads it*. All this should be understood; for such a practice is remarked.

The term "this law" extends the law for artisans to a band of musicians. Consequently, if persons of two descriptions are employed as fingers and musicians or the like, the rule of distribution

tribution among two persons is applicable ; but if it be an employment of persons of four descriptions, the rule in regard to four persons is applicable : so, if there be employment for persons of three descriptions, the rule of distribution among three persons must be understood. “ A share and a half ;” half more than one share ; let him who marks the time skilfully take one share, together with half a share : so the *Vivádā Chintāmeni* and *Retnācara*. If some of the musicians die, their shares of the pay, for so many days as they were employed, shall be delivered to their heirs, or to the king ; and let the king receive them for safe custody : but let the associates of the deceased cause the work to be finished by some other person, whether the employment be that of singing or dancing.

LVI.

VRĪHASPATI:—If, in time of war, any property should be brought from the hostile territory by robbers, or irregular soldiers, authorized by their lord, they shall give a sixth part of it to the king, and divide the rest among themselves in due shares.

2. Let their chief receive four shares ; the most valiant of them, three ; the most active, two ; and the rest share and share alike.

The *Vivāda Chintāmeni* explains the “ chief,” he who exerts mind and body ; “ valiant,” resolute ; “ active,” possessing superior strength. But CHANDÉSWARA, so explaining the chief and most valiant, says the third description means active in comparison with the rest.

Where robbers make incursions, one of them commands as their leader ; some, armed with bows, swords, or the like, are posted on the road to prevent the motions of the people ; others plunder ; and the rest carry the loads : such an arrangement is signified by the text. The commander is the chief ; for, skilled in counsel, uniting the rest, knowing the means of subsistence, he is pre-eminent : and all the rest act by his orders. This is expressed in the gloss, “ he who exerts mind and body.” His associates,

associates, who recede not from battle, but despise death, are described by the term "most valiant:" and these are posted on the road to prevent a surprise. Others, while the enemy is repelled by the most valiant, plunder foreign houses: these are deemed most active. Those who carry loads, furnishing corporal labour only, are inferior to the rest, and they receive share and share alike. "Active," expounded in the *Viváda Chintámeni*, possessing superior strength, will intend the same, if it be explained as denoting a person endowed with the strength requisite for breaking open doors, to enter foreign houses.

The shares should be distributed according to the numbers of each description: thus, if there be one chief, ten valiant, four active, and eleven inferior robbers, the plunder should be divided into fifty-three parts; but if the active robbers be able to perform the office of the most valiant, they may each receive three shares by special agreement.

LVII.

CÁTYÁYANA:—Of an enemy's property, brought from a foreign country by robbers commissioned by their lord, the king shall have a tenth part; and they shall divide the remainder by this rule:

2. The leader of the robbers shall have four shares of it; the bravest of his men, three; the most active, two; the others, equal shares.
3. If one of them, when they set out on their adventure, should be taken prisoner, whatever he may give for his ransom the rest shall pay equally with him.

CHANDÉSWARA says, "a tenth part, or sixth part, should be understood according to the nearness or distance of the foreign country." But MISRA holds, that the texts carry an implied sense. Thus, if the king protect the robbers, he shall receive a sixth part; being very distant, if he do not take measures to protect them, he shall have a tenth part only. Others hold, that
a sixth

a sixth part shall in general be received, for taxes have been ordained at the same rate : but if the expense and toil of the robbers be great, in consequence of their going to a very distant country, the king shall only receive a tenth part ; and this rate ordained by the text is in the nature of a favour : it must be understood that the king ought not in this case to receive more than a tenth part.

“ If one of them should be taken prisoner, &c.” if one of the robbers going to and fro be taken prisoner, and pay ransom to the captor for his release, the remainder of the plunder, after deducting what is given for his ransom, should be divided in the mode above mentioned : but if the ransom be given after partition, it should be paid in equal shares by all the robbers ; as suggested by the text, “ the rest shall pay equally with him ;” and because what had been already given, could hardly have been received before his capture. Such is the opinion of MISRA, and likewise of CHANDÉSWARA ; but he expounds “ taken prisoner,” confined or stopped. In fact that should be admitted ; for if he be taken prisoner, he must of course be confined near the royal residence ; and if he be stopped, being watched, it is possible he may afterwards be taken prisoner : it is therefore necessary that he should, if possible, give money to satisfy the guards. That ransom is disbursed for *the behoof of* all the robbers. Virtually the same sense is deduced from both expositions. If one be taken prisoner, the rest may also be apprehended on his information : therefore his ransom is a benefit to the rest. This appears to be the meaning of the Sage.

From the mention of partition, after giving a part of the plunder to the king, it follows that the robbers have property in the wealth seized by them : and that property is by occupancy, as the king's right of property, acquired by conquest, in the wealth of a foreign realm. The king honestly acquires property in that wealth gained by occupancy, through his own exertions, by victory in a just war against another armed prince of equal power (Chap. IV, v. XX). But the property of robbers, acquired by occupancy, through their own exertions, in an unjust war, unauthorized by law, against men sleeping, unacquainted with the use of arms, and deficient in strength, or by intimidating *the owners*, belongs to the quality of darkness (Chap. IV, V, xxvii 3).

Is not wealth stolen by a single robber, from the mansion of a sleeping householder, the property of the robber? VÁCHESPATI BHATTÁCHÁRYA answers in the affirmative.

It is said, a person taking property which lies before the owner sitting and awake, may make it his own. It cannot be objected, that the property, which is thus vested in the thief, is annulled by the occupancy of the owner. Even in the case of conquest, the conqueror's property would be annulled by the occupancy of the hostile prince. That is wrong; it must be affirmed, as is reasonable, that occupancy is not a mere acknowledgement of ownership or acceptance of possession, but the exercise of it: thus, wherever kings, acknowledging no human superior, exercise authority approved by the law, even there property arises; the exercise of dominion over effects by men, (whether they be robbers or not,) who acknowledge a human superior, namely a king, if it be authorized by him, takes full effect; he who exercises such dominion has property. If the exercise of dominion by powerful robbers be admitted, even without the king's authority, still the occupancy of a proprietor, supported by the double power of the king, and of justice, prevents the occupancy of a weaker thief: and thus the property is in the owner, not in the thief. In the case of conquest and defeat of kings, whoever surpasses another in regal duties, in justice, and in armed forces, can prevent another's occupancy; and property is vested in him: thus the right is ascertained by discriminating the power of occupancy, or retaining possession; and property so established must necessarily be admitted.

Others deduce from the expression, "property brought by robbers authorized by their lord" (where the word lord intends the king), that robbers acquire a title to what is seized by them with the king's assent, as warriors gain property in the wealth of a foreign country. But robbers, unauthorized by the king, do not acquire a title to effects stolen. SÚLAPÁNI does not admit the property of thieves in stolen goods; and the text quoted from NÁREDA supposes robbers authorized by the king.

That is questionable. Since it is necessary to establish occupancy as the obvious cause of property in waifs, and in the wealth of foreign conquered kingdoms, the right of unauthorized robbers, suggested by the literal sense of the text, cannot be disproved without

without much trouble; and there appears no occasion for such trouble: the reverse of the literal sense of NAREDA's text would not be pertinent.

What then is the meaning of the expression, "authorized by their lord?" It intends punishment of *robbers* seizing the property of others without authority from their lord; for, the *Mahābhārata* and other works direct that robbers should be expelled from the kingdom: but those who rob with permission from their lord are his subjects, acting in his service. Such a king is contemptible, because he receives property partaking of the quality of darkness, and because he injures others. But, if any king, not afraid of committing injustice, act in this manner, the Sage has taken the trouble of regulating the partition: but this legislator has not authorized robbery. The expression "brought from a foreign country," forbids the authorizing of robbery in his own dominions, lest the kingdom be destroyed. But if any thieves rob in their own country, the same distribution of shares should be understood: and, should they rob without the king's assent, whether it become known to the king or not, their shares should be the same. This and other *rules* may be inferred from reasoning.

If those robbers be taken prisoners, what is the mode of proceeding in that case? The king should cause the property to be restored *to the owner*. What king? he who protects his subjects, or he who protects robbers? The king who protects his subjects should cause the property to be restored *to the owner*. Shall the robbers in that case be punished or not? *The answer is*, how should the king punish them, since he is not their lord? Who shall receive the sixth part which is payable to the sovereign? The payment of it by the robber being necessary, he shall pay it to the king before whom he is brought. Should the protector of the robbers enter into a contest with the prince who protects his subjects? Though it be not directed by the law, he ought, on the reason of the law, to contend with him: for, how should he remain silent, having himself authorized the seizure of the property of others? and, the robbers having acquired property, partaking of a dark nature, in the stolen goods, if he do not contend with a foreign king who seizes those goods, how does he protect his own subjects? Or, if he do not protect them, how can

can he take revenue? for it would be inconsistent with the following text:

LVIII.

MENU:—That king who gives no protection, yet takes a sixth part of the grain as his revenue, wise men have considered as a prince who draws to him the foulness of all his people.

If he cannot give protection, let him restore the sixth of the grain he has received; and the king, even though he *generally* protect his subjects, should not take his revenue from them if he cannot recover their property from robbers.

Some hold, that the king, for the purpose of protecting the owners of property, should punish robbers whose place of abode is in a foreign territory; for, no distinction is intended, in the following text, between robbers coming from foreign countries, and thieves residing in his own dominions.

LIX.

MENU:—In restraining thieves and robbers, let the king use extreme diligence.

It is consistent with common sense to punish robbers apprehended by guards, whether they be inhabitants of foreign countries or of the same province. It is no judicial practice, nor induction of common sense, that, when robbers taken in the fact are brought before the king by his officers, he should inquire, and inflict punishment, if he discover them to be inhabitants of his own dominions, but release them if they be inhabitants of another country. Were it so, there would be no punishment for robbers who live in mountains and caves ruled by no king.

If robbers coming from foreign dominions be punished when taken in the fact, their punishment cannot afterwards be opposed; nor can their protector interfere to prevent their chastisement. But the unjust king, apprehending the publicity of the protection

protection which he affords to robbers, though he may despise the consequences of his iniquity, may not *be willing to* make his conduct publick. It is said, he is not guilty of injustice in protecting the robbers. That may be true, but he should himself inflict punishment. He ought not to authorize robbery, nor ought he to permit pain to be inflicted on another whom he has authorized to rob.

But, in the case of robbery without *previous* authority, he truly authorizes it when he receives a sixth part of the plunder. But if he receive not that sixth part, he should himself punish the robbers, or restore the goods to the owner. If robberies be committed in his dominions with his permission, since it is necessary that he should protect both *the owner and the thief*, he should cause the property to be restored to the true owner, and himself pay a fine, casting the amount of that fine into the water. But, according to the opinion of those who do not admit the amercement of kings, penance only shall be performed. If there be an universal monarch, possessing authority over all countries, and to whom all *other* princes are subordinate, may he impose fines on kings? This question should be examined under the title of Robbery.

We may affirm, that, for the purpose of obtaining victory over a foreign and stronger kingdom, a king desirous of reducing the power of that kingdom commissions robbers, that the subjects distressed by their depredations may desert that realm, and that the riches of that kingdom may be thus diminished, and victory be obtained over it. This text has been delivered by the Sage as a rule of partition among robbers in such cases. The robbers have property in goods so taken, as warriors have property in horses and elephants of war, in arms, and the like: but property in wealth acquired by conquest in open war partakes of the quality of truth (LVIII); and the property of robbers partakes of the quality of darkness; for it is gained by exciting terror, or by the murder of unarmed, timorous, and sleeping men, and is disapproved by the law. However, the law permits *a king* to reduce *the power of a foreign* kingdom by means of robbers, with a view to conquest; but the recourse to robbery from a motive of avarice, to increase his own treasure, is not justifiable: the law does not assent to the depredations of a king influenced by avarice;

rice ; and the Sage has not declared a rule of partition for such cases. But *obedience to the law itself*, not avarice, must be the motive for the conquest of a foreign realm.

LX.

YÁJNYAWALCYA :— Whatever be the *rights and duties* of a king protecting his own realm, even all those devolve on him who seizes a foreign kingdom.

To expatiate *on this subject* would be superfluous.

LXI.

CÁTYÁYANA :— The law *before* propounded relates to all partners, whether merchants, husbandmen, robbers *commissioned in war time*, or artisans, when they have made no special agreement for their shares.

When they have not made a special agreement respecting their shares. CHANDÉSWARA so expounds the text. Some explain it, “when they make a partition without having *previously* settled what shall be the share of each *partner*.”

Other partners, not already mentioned, are comprehended in this text, as servants, boatmen, and others, working in partnership. In these cases also, the chief is entitled to a double share. If the labour be of three, four, or more kinds, one additional share is allowed for each degree of superior labour : however, it should be admitted, from the reason of the law, that the shares shall be equal, if the labour be of different natures, but equal.

If some king, or rich man, employ learned persons to compile a system of law, that the law may be *generally* understood, and justice be observed, or to compose a poem for his gratification, or a work of any other kind, and give wealth to them for their maintenance, or as a token of respect ; then also, if he
make

make not separate gifts to each, this same rule is applicable. Thus, if the labour be of two kinds, the gifts shall be distributed in single and double shares; if it be of three or more kinds, the distribution should be made accordingly, in the mode formerly mentioned. It should not be argued, that the shares may be regulated as in the performance of solemn rites; for, in the present instance, there are no *Brahmâ*, *Brâhmanâchch'hanfi*, and so forth, to give occasion for such a regulation of the shares.

Another incidental observation may be made: if the work be jointly composed by a teacher and pupil, a master and servant, or the like, there is no such rule of distribution. If the teacher, or other principal person, have promised any thing, even that shall be given; otherwise it is optional. The teacher and the master, not the pupil or servant, shall share what is given as a recompense by the king or other *employer*. So likewise, if any loss arise. *But*, if the loss happen by the fault of the pupil or servant, the blame is imputable to that pupil or servant: if the book fail by his fault, it is his loss. If the teacher die, or be disabled, what was receivable by him may be taken by his heirs; and they should complete the work themselves, or by means of others. But, should there be no special agreement concerning an employment for a long space of time, the work and the gain may be regulated at the pleasure of the king, or other *employer*. Also, should the pupil die, the rule is similar; but here the option, *allowed* to the teacher, or his heir, is included in the case noticed of the king's option. The same should be understood where many join in composing a work, according to their respective superiority. These and other rules may be inferred from reasoning, by a simple exertion of intellect.

So, in joint conquest and in joint purchases, whatever share a partner has in the principal stock, such shall be his share of what is acquired: and the exertions for the preservation of the stock, and so forth, should be proportioned to the shares in the principal stock. Similar decisions should be given in the case of barter in partnership, and also in other cases.

CHAP. IV.

ON

SUBTRACTION

OF WHAT HAS BEEN GIVEN.

SECT. I.—On Unalienable Property.

I

VĀHASPATI:—This law, respecting concerns among partners, has been fully declared: *the law concerning* what may or may not be given, and what is or is not a valid gift, shall be next propounded.

Concerns among partners have been unfolded; undue gifts and the rest are next “unfolded.” The construction of the sentence resumes this term from the context, because the sense requires it.

II.

NĀREDA:—When a man desires to recover a thing which was not duly given, it is called subtraction of what has been given; *and this is* a title of administrative justice.

2. In civil affairs, the law of gift is four-fold; what
may

may or may not be given, and what is or is not a valid gift :

3. Things which may not be given, are eight ; what may be given, is declared to be of one sort *only* : know valid gifts to be of seven sorts ; void gifts assume sixteen forms.

The man who, not having duly given a chattel, wishes to retract the donation, is called a recanter of gift, and *this* is a title of law : he contends for withdrawing what has been given. Thus simple men interpret the word from its etymology : it intends a man who pleads that he has not duly given what the other party affirms to have been duly given. Others read, " what a man, &c. (*yat* instead of *yah*)." Some take the word " it " indeclinably ; for, the dictionary of AMERA explains the co-relatives, " what, that ; why, therefore : " because he desires *to withdraw the gift*, therefore the title of law is subtraction of what has been given. It follows, that the title of law refers to the wish *of retracting the gift*, or to the gift retracted.

The term used by MENU (Chap. I, v. II 1) denotes payment *or delivery* ; non-delivery of what has been given is retraction of it. Delivery here intends a perfect gift : its converse is an imperfect gift, and is a title of law, namely subtraction of what has been given. Given denotes the intention *of the giver expressed in this form*, " let this be thine : " the word interpreted subtraction, may signify imperfect *or undue* donation ; where that exists, there is imperfection of gift. In the text of NÁREDA, " *on what ground*," and " *that being ascertained in his gift*," may be supplied : " on what ground a man desires to retract a donation, that being ascertained in his gift, &c." for it has the same import with the text of MENU : the imperfection of the gift cancels it ; accordingly the text expresses " not duly given." There is no difficulty in including under this title a man who desired to retract a gift which is *afterwards* determined to have been duly given, since a suit *at law* exists previous *to that decision* : but on the construction proposed by simple men, " not duly " would be unmeaning. Thus some interpret the text. But CULLÚCABHATTA explains the term employed in the text, " withdrawing
or

or taking back." According to his interpretation, "*recovery desired*" must be supplied in the text of NÁREDA: "when a man desires to recover what has been given, the recovery desired by him is retraction of what has been given, and this is a title of administrative justice."

The gift may be imperfect, because the thing is unalienable, or because it is given by a person not entitled to give it. Thus the gift may be imperfect, because the chattel is unalienable, or because it is improperly given, or because it is given to a wrong person, or without the assent of the father and so forth, or at a time when the donor is defiled. So MISRA. This will be explained in another place, it is here mentioned incidentally.

"In civil affairs, &c." (II 2): the rule to be established, that gifts made by a man afflicted with disease and the like are void, regards civil gifts, not donations for a religious purpose. This title of law does not extend to a gift made for a religious purpose: the donation is valid, if it be made by the owner *of the thing*.

III.

CÁTYÁYANA:—What a man has promised, in health or in sickness, for a religious purpose, must be given; and if he die without giving it, his son shall doubtless be compelled to deliver it.

RAGHUNANDANA and other authors expound this text, "what a man, even afflicted by sickness, has promised to give, must, if he die, be given by his son." It is not proper to say, that what he has promised must necessarily be delivered, but the gift is not valid. The rule must be understood of other cases as well as of sickness; for the reason of the law is equally applicable.

"The law of gift is four-fold;" literally, the path of donation (II 2). The ways of arriving at, or receding from, the annulling of property, and thereby effecting donation, are four. Thus, by the way of void gifts, the act recedes therefrom; by the way of valid gifts, it arrives thereat: the rest will be evident in course. The wish of retracting an invalid gift takes effect; the wish of withdrawing a valid gift is fruitless. This is the whole rule

rule concerning subtraction of what has been given ; for an invalid gift only may be withdrawn.

Wherever the gift is invalid, *the property* is actually recovered : how then does the man “ wish ” to recover it ? Where effects are possessed by another under the semblance of a gift, a doubt arising whether they shall or shall not be recovered, the Sage directs that they shall be recovered if it be ascertained to be *merely* the semblance of a gift, but shall not be recovered if that be not ascertained. An invalid gift *is mentioned* to determine that the supposed donation is void.

Should not gifts be here said to be of two sorts, valid and invalid ? why are they denominated from what may or may not be given ; *for* there is no proper distinction, in treating of this subject, between what may and may not be given, and what is and is not a valid gift ? Simple men reply, both are noticed incidentally : both are mentioned to denote that the gift of a son or a wife is imperfect, because they should not be given. For what purpose is it said that the gift of what may not be given is imperfect ? The answer is, it appears that a fine is incurred by such a gift. Those things, in the giving of which there is sin, should not be given : and that sin is not expiable by penance alone ; for, were it so, such gifts should be discussed under the title of Penance *and Expiation* : being noticed under the head of Judicial Procedure, it appears that the giver of what should not be given shall be amerced. Thus some *expound the law* : their opinion will hereafter be considered.

VRĪHASPATI has not mentioned the term “ subtraction of what has been given ; ” but mentions the four-fold *distinction* of what may or may not be given, and what is and is not a valid gift : the rule must be deduced from the acceptation of the terms, “ what may not be given, &c.”

The eight things which may not be given are thus enumerated :

IV.

NĀREDA:—What is bailed for delivery, what is lent for use, a pledge, joint-property, a deposit,

a son, a wife, and the whole estate of a man who has issue living,

2. The Sages have declared unalienable even by a man oppressed with grievous calamities, and, of course, what has been promised to another.

What is bailed for the use of another (*anwāhita*) is a distinct kind of bailment, explained in the chapter on Deposits. It is mentioned to show that it is comprehended under the general term of deposit, by the same rule by which one name of kine may denote cattle of that sort, and a synonymous term in the same sentence may intend cows only: consequently, there is nothing inconsistent with the number of eight *unalienable things*.

May it not be said that pledge and loans for use should not be repeated, for they are nearly allied to deposit? Some distinction may be admitted; because a pledge is connected with debt, and a loan for use gives dominion over the chattel to one who is not the owner: but bailment for delivery is a mere repetition, for the owner's dominion *over the chattel subsists in full force*; a thing deposited through the intervention of another, a chattel bailed by an absent man, and the like, are deposits generally, for they are only distinguished by minute differences.

MISRA reconciles the number by joining the words son and wife into one compound term: "a wife with a son, mentioned conjointly:" consequently, there is nothing inconsistent with the eight-fold distinction premised. But the text shows that a wife and a son may not be given, as the expression "the father goes with his son" denotes that both go.

V.

VRĪHASPATI:—The prohibition of giving away is declared to be eight-fold: a man shall not give joint property, nor his son, nor his wife, *without their assent in extreme necessity*, nor a pledge, nor all his wealth *if he have issue living*, nor a deposit, nor a thing borrowed for use, nor what he has promised to another.

In

In this text bailments for delivery and the like should be understood as comprehended under the term deposit.

Is it not superfluous to declare that deposits and the like may not be given? for, in their nature, they are unalienable, because they are the property of another; else it should also be said that the property of another, actually enjoyed by the owner, may not be given by a stranger. Consider it as mentioned for the sake of an amercement imposed on him who gives away deposits and the like. Is there no punishment for him who gives away the property of a stranger under other circumstances, that deposits and the like should be *pecially* declared unalienable? Since, under other circumstances, the property of a stranger cannot be given away without theft, the giver shall be punished as a thief: but, considering that deposits and the like, being actually in the depositary's power, might be given away *without suspicion of theft*, the beneficent Sage has declared them unalienable.

Others remark, that VIJNYĀNĒSWARA admits the creditor's property in a pledge; and the property of the borrower, in a thing borrowed for use and the like, may also be admitted: but the right of the owner is not annulled; *it subsists* like the concurrent property of husband and wife: therefore the borrower, but not a stranger, may, with the assent of the owner, alienate at pleasure a chattel borrowed for use. Thus, on the grounds of such a subordinate property, a gift or other alienation might be made; but the Sage prohibits the gift (IV 1), because that property is subordinate.

A gift of deposits and the like, made by mistake, is not valid (Chapter II, V. xxvii). Therefore deposits and the like, given away by mistake, may be recovered. With a view to this, MISRA has said, "the gift may be imperfect," because the chattel may have been unalienable." Others affirm, that creditors and the rest may create, by gift or the like, an interest equal *and similar* to their own.

"Joint property" (IV 1) is explained, in the *Retnācara* and *Chintāmenī*, what belongs to more than one owner. Therefore the sense is, that one brother shall not, without the assent of the rest, give away undivided wealth held as the property of several brothers.

Shall he not give away the whole of the joint-property; or shall

shall he not give away the amount of his own share? On the opinion of JÍMÚTAVAHANA delivered in his gloss on the text of VYÁSA (Chapter 2, V. vi), "because the family would be injured by a sale, gift, or other *alienation*, effected by a distressed coheir as part-owner of *joint property*," some remark, that, if it were intended to forbid the sale or gift of the whole, the author would have said "they would be deprived of the means of subsistence if a gift or sale were made," thereby forbidding *the alienation of the whole*. There is no difference whether the sale or gift of the whole wealth be made by a parcener distressed or not distressed; consequently, it would be vain to contend for a partition or the like, with a distressed man, who had sold the amount of his own share of *the joint-property*: to obviate this consequence, even a parcener's sale or gift of his own share without the assent of the coheirs is forbidden. Such is the principle of *the rule*: and here, from this prohibition of the sale or gift of his own share without the assent of the coheirs, it appears that the parcener shall be punished if he do so; for the texts of NÁREDA and others, under the head of Judicial Procedure, show that joint-property may not be given away. At present, parceners do not make gifts or sales of undivided land, or other property, without the assent of the coheirs; each says, "how should I sell it? this property is not divided." Such is the general custom in some countries. But certain lawyers hold, that, if a parcener give or sell his own share, the king does not impose fines on trifling occasions; or the parceners, from indolence, or considering it as fruitless, do not inform the king: in this view of *the matter*, custom permits parceners to give or sell the amount of their own shares. If the maintenance of his family cannot be *provided by a parcener* without the sale of that property, and his wealthy coheir neither make a partition, nor consent to the sale, what shall be done in that case? The king, they say, on the application of the person who wishes to sell *his share*, should give attention to the matter. But here it must be understood, that joint-property is unalienable without the assent of the coheirs: however, should the gift or sale be actually made, it is valid; for the following text may relate to the amount of the respective portions of *joint-property*, as well as to divided shares; and the will of the owner being a sufficient cause of vesting property in another,

other, the parcener may not be able to bear the delay of partition, or of obtaining the assent of his coheir.

VI.

NÁREDA:—If they severally give or sell their own *undivided* shares, they may do what they please with their property of all sorts, for surely they have dominion over their own.

It should not be objected, that the assent of coheirs should be established, under the authority of the text, as a necessary association for the disposal of another's right in undivided immovable property: thus, without the union of all the *requisite* causes, the effect of conferring property on another does not take place. Since the text may be pertinent in the sense above mentioned, it is wrong to impose the difficulty of establishing such an association. Herein SRÍCRÍSHNA TERCÁLANCÁRA concurs. But if a parcener, without the assent of his coheirs, give the whole joint-property, the gift is null; for the joint-property of all cannot be divested by the act of one.

It is questioned whether his own property be, or be not, annulled by the act of a single parcener. It should not be said that his own property is not annulled, because the gift, being improperly made, is in its own nature imperfect, and is void as the act of a man partly destitute of ownership. There is nothing to prevent the annulling of *his own* property, since the gift, which he himself makes with the intention of annulling the rights of all the parceners in that chattel, is the act of an owner, of whom property is predicable. Consequently the ownership of the giver appears in this instance to be alienable: but the ownership of the rest subsists *in full force*. The meaning of ancient authors, who hold a gift of joint-property to be void, is the same. But a parcener's gift of his own share is valid. All the brothers have each their respective predicable property in all the effects.

It should not be objected, that, when the father dies, if one common property in the same thing be vested in several brothers; and, should one of these die, if the right of all the parceners be annulled,

annulled, and another property be vested in the *surviving* brothers, together with the son of the *deceased* brother, it is troublesome repeatedly to establish joint-property vesting in many persons; therefore the property in the effects vests in the persons severally. After the death of a brother, it being necessary to establish a single property vesting in his son after the annulling of his single property, we find, *say these lawyers*, no greater difficulty in establishing a property not dissimilar predicated of many persons. It must be therefore established, that the ownership of all is, or is not, annulled by the act of one; not that the giver's right is annulled; and that the property of the rest subsists. These lawyers therefore think that the gift of one may be valid as the gift of all.

To that argument there is this objection: it suits the opinion in which property is referred to things; but it does not accord with the sentiments of the *Naiyāyikas*, who dissent from that opinion, and refer property to persons: thus it is difficult to establish that the ownership of all the brothers is annulled upon the death of one; and no quality, except conjunction and the like, is acknowledged to be inherent in two individuals *at the same time*. Or, admitting single property, still there is no difficulty. Thus, after the right of all the brothers has been annulled on the death of one, a single property arises predicated of the surviving brothers and the heir of the deceased; not a distinct property predicated of the heir alone. In the present case also, after the right of all the parceners has been annulled by gift, property arises predicated of the other parceners and the donee; for gift only creates a property similar to that held by the owner, *who makes the gift*.

Is it sale *or* gift without ownership? What objection is there to its being *considered as* a true sale *or* gift without ownership? For it might be supposed that he shall be punished as a thief for such a gift or sale: yet that *punishment* is not *inflicted* in this instance, because the law has forbidden it (Book V, V. ccclxxvii 4); in the case of possible theft only, that punishment is consistent with common sense. But some hold, that it is not sale without ownership, because the parcener is not a person different from the owner of the chattel.

Then what shall be the punishment? The penalty directed for the gift of what is unalienable. That penalty will be quoted from

JÍMÚTA-

JIMUTAVÁHANA and others, as expressly declared by MENU. This should be well examined.

It must be noticed, that if a parcener, without the assent of his coheirs, give or sell, to any person, some one chattel out of the whole undivided property, at a subsequent time, when partition is undertaken, that chattel should be included in his share.

Shall all the parceners divide the value of the effects *aliened*? or shall the other parceners receive back their portions of those effects, and the *donee* or buyer recover the price of their shares from the *donor* or seller? If the other parceners consent that the effects aliened should become a part of his share in the joint-stock, then it may be included in his allotment: but if they do not consent to that adjustment, nor to receive their shares of the value, they may recover their shares of the effects. Otherwise they may *severally* insist, "this chattel must be received by me, it shall not be given to that brother; distribution shall be made by lot." But, in fact, there can be no distribution by lot in this instance; for the seller, whom that distribution would concern, is no longer an owner. It cannot be said, those effects are of course included in the seller's share. All the brothers having ownership in those effects, that ownership is not annulled.

Should it not be said, that, according to the opinion of JÍMÚTAVÁHANA, who contends for dispersed property, *vesting severally in the coparceners*, sale, as well as distribution by lot, determines the property *in particular chattels*; otherwise a parcener selling any chattel, and consuming *the produce of the sale*, would be guilty of embezzling the property of another? It cannot be affirmed that there is no difficulty, because CATYÁYANA directs that his offence shall be *patiently borne* (Book V, V. ccclxxvii 4). Still, in the apprehension of sin, the penance directed for cases of doubt would be requisite; and he who consumes much, would undoubtedly be a sinner. A dissimilar property is not created, but a right proportionate to the share *of the donor or vender*: and if it be affirmed that he who sells for his subsistence that which he occupies is proved to have had property therein, it follows, that a single ownership exists in effects sold for subsistence, and the other parceners would not be entitled to a share of the effects so aliened. This question is thus answered: it is a maxim, that penances are similar to punishment; exemption from penance

is therefore implied in exemption from punishment. The laws which ordain partition by lot and otherwise, ascertain property ; but occupancy and the like does not ascertain it. If the property be doubtful, all the parceners are not entitled to shares ; but, in this instance, if a sale be made for *necessary* consumption, the seller shall not be punished : otherwise, he may be chastized. It should not be objected, that the parceners could not receive equal shares, because the property cannot be determined by the decision of arbitrators, without the mutual assent of the contending parties *to the appointment of them* ; and distribution by lot has been already set aside. In this case no distribution by lot does take place ; but the other parceners do not abandon their shares. The arbitrators, to whom their complaint of the parcener's illegal act is referred, rejecting the vender's plea, adjudge equal shares to all the parceners : and the notion of a property which requires specifick mutual assent *to authorize alienation*, supposes a *common* right vesting in all the parceners, like their property in a single slave, or the like. For this purpose, the gift or alienation of undivided effects without the assent of coheirs is prohibited : a parcener is not forbidden to give his own share generally, without specifying particular chattels, in this form ; “ I give you my share ; ” for then the donee may be admitted, like a parcener, to a distribution by lot ; but, even in that case, the assent of coheirs is required for the alienation of immoveable property (XIX 5).

Joint-property is wealth belonging to more than one owner. MISRA says, ‘ the gift is invalid, because a man has not full dominion over joint-property, a wife, or a son : and the want of dominion, *in the other instance*, is deduced from the *same* reasoning, *which proves it in the case of joint-property*. ’ By “ the same reasoning ” he means that the ownership of one cannot be annulled by another. From MISRA's exposition it is inferred, that a parcener's gift of his own share of undivided property is void. But, to reconcile the two opinions of *different* authors, we adopt the sense inferible by reasoning, and say, a gift of the whole joint-property is void, not a gift of the parcener's own share. Thus the donor cannot, at his own choice, annul the ownership of others : *but* he is not debarred from alienating his own single right in the joint-property ; for such acts by partners in trade are often seen in *common* practice. This may be stated as the opinion
of

of VÁCHESPATI BHATTÁCHÁRYA, and VIJNYANÉSWARA. Therefore, the gift is valid as far as the donor's share is concerned; but he shall be punished, and must perform penance. Such is the rule ordained concerning gift, or other *alienation*, of what may not be given. 'That a thing may not be given' denotes that the gift is attended with sin: for this form of speech bears the sense of the imperative. It does not denote that the gift is a void act: were it so, it would not differ from a void donation; and full dominion would not be noticed under this title of 'what may not be given.' If it be said, this title is intended to show punishment *for such gifts*, it is answered, this form of prohibition implying offence, the offender should be punished. Thus the gift of things which are enumerated among those which may not be given, is punishable; gifts enumerated among those which are void, are utterly null; and those noticed under both heads, are both *void and punishable*: as the gift of a deposit, or the like, of another's share in undivided property, and so forth.

In regard to a son or a wife, MISRA says, that the gift is void for want of full dominion. It appears, under the authority of the text, that there is no full dominion over a son and a wife who do not consent to the sale. Here this objection *occurs*: if a father, or husband, have power to give away a son, or wife, it should appear that they have the dominion of owners over them; and having ownership, how can their gift be void, being made by persons neither insane, nor otherwise incapable? and these are not enumerated among void gifts. Consequently the donation, even without their assent, is valid; but the donor shall be punished, for they are found in the number of unalienable things *and persons*. In the text of CÁTYÁYANA (VII) the gift or sale of a son or wife, without the assent of the parties interested, and without extreme necessity, is forbidden: it is not said that the gift or sale is void,

VII.

CÁTYÁYANA:—A wife, or a son, or the whole of a man's estate, shall not be given away or sold without the assent of the persons interested; he must keep them himself;

2. But,

2. But, in extreme necessity, he may give or sell them *with their assent*; otherwise, he must attempt no such thing: this has been settled in codes of law.

“Without *the assent of the persons interested*,” (that is, of the son, wife, kinsmen and so forth,) these must not be sold nor given away*. If he neither give nor sell them, where shall he place them? The Sage replies, “he must keep them himself.” MISRA observes, that if *the persons interested* do not assent to the gift or sale, these three (*the son, wife, and the whole of a man's estate*) must be retained by himself. Even with their assent, they can neither be sold nor given away unless in extreme distress (VII 2). It is wrong to affirm, that, after forbidding the gift or sale of a son and the rest without *the assent of the persons interested*, the admission of such a gift or sale in extreme distress shows that *the gift or sale* may be made in such circumstances even without *the assent of the persons interested*. NÁREDA, forbidding *such a gift or sale*, even in extreme distress (IV), would contradict CÁTYÁYANA. Therefore, in the utmost distress, a son and the rest may be given away, with *the assent of the persons interested*: but, even in such circumstances, the gift may not be made without their assent. Such is the demonstrated rule.

A son is also given for the purpose of adoption; *this being done as an act of duty* to relieve the adopter's distress arising from the want of male issue, no penalty is incurred: the assent *required* is *found in* the want of opposition; for, it is a rule that not to forbid is to assent. Therefore the gift of a son under the age of five years may be valid; and it appears that a donation may have force even without *the assent of the persons interested*. Since the gift of an unfuitable son, even though he do not assent, is valid, therefore the father may have full power to give away *his son*; and, from parity of reasoning, the same may be understood in regard to the gift of a wife. It should not be objected, that, under the authority of the text, the gift of a son or wife is valid without their assent, if they do not oppose the donation; but in the gift of an infant there can be no opposition *made by him*. It is troublesome

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* I omit a grammatical disquisition justifying the use of the masculine gender in the instance of a participle governed by unconnected words of the three genders.

to prove want of opposition *an* associated *cause* for the validity of *an act* divesting property, which is an effect of acts to which the assent of the owner is absolutely required. If a son be given with his consent, but in no extreme distress, shall the donor be punished? It is said, both the utmost distress and *the* assent of *the persons interested* being mentioned as causes of gift or sale, if either be wanting, it appears that punishment shall be *inflicted*: otherwise the mention of extreme distress would be unmeaning. Who will inform the king? Any-how informed of it, the king may of himself ascertain the fact, and impose an amercement; as is shown in the case of *persons guilty of* drinking spirituous liquors and the like.

Some remark on the words of MISRA, "the gift of a son or wife, without their assent, is not valid," that the dominion over the son or wife is annulled by a gift made without their assent: but no property vests in the donee; for a son or wife, being rational beings, are very different from kine, gold, or the like. After the dominion over the son or wife was annulled, before property could vest in the donee, they became independent at the moment when dominion was annulled; and the father or husband having no dominion, his gift was then an act done without ownership. If that be true, is not every donation invalid, even *the gift* of cattle, of gold or the like, or of an infant under the age of five years; for there is a momentary want of ownership? The father or other person having dominion at the very time when the gift is made, it may be *considered as* one made by an independent person: but here the son subsequently becoming independent, the gift is invalid without his assent; for it is reasonable to justify property by the *joint* gift or sale of every independent person concerned. After fifteen years, a son is independent, if his parents be dead (XV). The independence of a son, after his parent's interest ceases, being thus declared, the gift of an infant five years old is valid. How can paternity be valid in respect of sons self-given and the like; for they commit themselves to a father before the age of five years, and were not independent, their age being less than fifteen years? In the want of another owner, such adoptions being necessary, their independence may be admitted in practice. Both opinions should be well examined.

VIII.

VASIST'HA : —A son formed of feminal fluids and of blood proceeds from his father and mother, as an effect from its cause: both parents have power, *for just reasons*, to give, to sell, or to desert him; but let no man give or accept an only son, since he must remain to raise up a progeny for *the obsequies* of ancestors. Nor let a woman give or accept a son, unless with the assent of her lord*.

“Nor let a woman give or accept a son:” give, having a secondary sense without losing its literal meaning, comprehends sale and the like. CHANDÉSWARA.

Consequently, by parity of reasoning, “may not be given,” in the text of NÁREDA, denotes also that they may not be sold: and by *the same* parity of reasoning, the term cannot be taken in the secondary sense of sale only, when thus employed in a single text.

“Both parents have power, &c.” Have the father and mother power jointly *to give, to sell, or to desert a son*; or, *have they that power severally*? Not the first: a gift made by the husband alone, after the death of his wife, would be void; but this is not intended, for, by declaring that a wife has not power to give *a son*, it is implied that the husband has that power. If the second construction be deemed admissible, still the husband's *previous* assent is required for a gift made by a widow.

A gift made by the husband while the wife is living, without her assent, to a person requesting it for the adoption of a son given, would be valid. This cannot be admitted. Were it so, that given son would not be forsaken by his mother: though a woman be dependent, the alienation of female property, or of *a mother's* rights over her son, by the gift of the husband *alone*, is not valid in law or reason. It is said, the word “or,” which occurs in many texts concerning sons given, shows the right both of the father and mother severally to give a son: but there is this difference:

* See the remainder of the text in Book V, (V. cclxxiii.)

ference: "if the father be living, with his assent; if he be not living, without it." And from this exposition of CHANDÉS-WARA it is established, that *parents* have that right severally: but the filiation to another person must be admitted without desertion of the mother. This will be more fully discussed in book *the fifth*, On Inheritance, under the title of Sons given.

MISRA affirms, that "a woman cannot accept a son even with the assent of her lord, because she is precluded from the oblation to fire with holy words from the *Vēda*, which is a part of *the rites* on the acceptance of a son, as will be mentioned under the title of Sons given." From this opinion VÁCHESPATI BHATTACHÁRYA and others dissent; for it is not said, by any author, that the principal object cannot be attained if a *secondary* part of *the rites* be prevented: women and *Súdras*, though precluded from sacrifice, are observed to be qualified for dismissing a bull on *solemn* occasions. If adoption be null without an oblation to fire with holy words from the *Vēda*, still nothing prevents the validity of the acceptance: *and* by that acceptance, according to MISRA's opinion, *the child* would fall under the description of a slave.

What some remark, that the wife has no right to give a son after the death of her lord without his previous assent, may be questioned; for, without an *express* ordinance, a woman's right, inferible from the reason of the law, to annul her own property after the death of her husband, without authority from him, cannot be barred. It may be examined, under the title of Inheritance, whether the child be a son given *by his parent*, or a son self-given. Some explain it to be MISRA's intention, referring the text of VASISHTHA to the son's assent, and, in his gloss on that text, discussing the acceptance of a son given *for adoption*, to require the son's assent to the gift, even in the case of a son so adopted. This should be examined: the filiation of a son given under the age of five years is legally valid; his then utterance of consent would be taught like *the speech* of a parrot or the like; there is no authority for admitting, in judicial procedure, words spoken by an infant under the age fit for business: therefore, in ordaining that "both parents have power to give, to sell, or to desert a son," his assent is required for the gift or sale, if he be acquainted with affairs, *or adult in law*; and the acceptance of a son given *for adoption*

adoption is discussed incidentally, because the text may relate to that *subject*.

IX.

DACSHA :— Joint-property, deposits for use, bailments in the form called *nyāsa*, pledges, a wife, her property, deposits for delivery, bailments *in general*, and the whole of a man's estate, if he have issue alive,

2. Are things which the learned have declared unalienable even in times of distress: the man who gives them away is a fool, and must expiate *the sin* by penance.

Here nine things are declared unalienable; but a son is not mentioned: including a son, ten things *and persons* may not be given. VRĪHASPATI (V) declares the prohibition of giving away to be eight-fold: though deposits may be considered as comprehended in his text under the term "*nyāsa*," still female property is not included in that text; and what is promised, not included by NÁREDA *in the number of eight unalienable things*, is included in that number by VRĪHASPATI. On this mutual contradiction CHANDÉSWARÁ remarks: "it is not implied, that the enumeration of unalienable things, as delivered by other Sages, is curtailed by what each himself declares." Consequently, where nine things are *declared* unalienable, it is true of eight; and if ten or eleven things be so, the same is affirmed of nine or eight.

The female property of wives, like the property of a stranger, may not be given; for there is a want of ownership.

X.

CÁTYÁYANA :—Neither the husband, nor the son, nor the father, nor the brothers, have power to use or to aliene the legal property of women.

2. If any one of them shall consume the property of a woman against her consent, he shall be compelled to pay interest *to her*, and shall also pay a fine *to the king**.

“Consume” is here employed in the comprehensive sense of sell, *or aliene, &c.*

“If there be issue alive” (IX 1) : if there be a son, grandson, or great grandson, who have equal dominion *over the property*, it is ordained by NÁREDA and many other Sages, that the whole of a man’s estate may not be given away : and if any person, though he have issue living, do give away his whole estate, he shall be fined. This is evident ; and penance is also expressly directed by DACSHA. On the doubt whether the gift be valid, notwithstanding the amercement and penance imposed, MISRA says, “the gift of a pledge, a deposit, and a bailment for use, is prevented by the want of property ; and *the gift* of a son, a wife, a man’s whole estate, and what has been promised *to another*, is *barred* by the authority of the text :” according to his opinion, the gift is not valid.

It should not be objected, that, by saying “gift is prevented,” it is not meant that such a gift is utterly null, but that it should not be made. The gift is invalid, because the donor has not independent power over joint-property, a son, or a wife. The want of independent power *to dispose* of joint property *is founded* on reasoning ; *the want of power to give away* a son, or a wife, against their consent, *is founded* on the authority of the text ; and MISRA subsequently says, that “*the gift* of a man’s whole estate if he have issue living, and any person’s *gift* of what he has promised to *another*, are *invalid* under the authority of the text ;” for it is proper to refer his words to the invalidity of the gift, since the form of expression implies a reference to what has preceded. Consequently it is an established rule, according to MISRA, that a gift of his whole estate by a man who has issue living, is invalid without the assent of the persons interested. But this supposes gifts for civil, not for religious uses ; since it is recorded in *Purānas* and other works, that HERISCHANDRA and others gave their whole

* Cited in Book I, V. lxxiii. and again in Book V, Chap. ix.

whole property for religious purposes; and NÁREDA limits the present title to civil affairs (II 2).

If a man, reserving a single shell, give away all *the remainder* of his property, is the gift valid? It is said, even in this case, the gift is not valid; for the prohibition of giving away the whole estate is founded on the consequent distress of the family from want of subsistence. Therefore, after setting apart a sufficiency for the subsistence of the family, a gift of the remainder is valid; but a gift of the whole estate, reserving only a shell or the like, is not valid, as will be mentioned in explaining a text of VRĪHASPATI (XVIII 1): and JÍMÚTAVAHANA says, “a gift or other *alienation* of the whole estate is forbidden on account of the subsistence of the family; for the family must necessarily be maintained.”

What is a sufficiency for the maintenance of the family? Not so much as is consumed in one day by the actual members of it; for that would be inconsistent with approved usage; and duty would be violated, since the family might next day be deprived of subsistence.

XI.

MENU:—The ample support of those who are entitled to maintenance, is rewarded with *bliss* in heaven; but hell is the portion of that man whose *family* is afflicted with pain by his neglect: therefore let him maintain his family with the utmost care.

This text forbidding the family to be left to pain *and distress*, the prohibition would be ill observed by maintaining them for one day only; the prohibition is observed by maintaining them for life.

Then, any-how estimating the duration of life, and setting apart a sufficiency for their maintenance during that period, a man may give away the remainder of his immoveable property and the like. This is not consistent with common sense; and NÁREDA declares it necessary to preserve wealth.

XII.

XII.

NÁREDA :—Even they who are born, or yet unborn, and they who exist in the womb, require funds for subsistence ; the deprivation of the means of subsistence is reprehended.

“ Funds for subsistence ;” means of living. This is supposed by JÍMÚTAVÁHANA to be *meant of* wealth inherited from ancestors ; and immoveables constitute the best civil property : therefore the term is used in its acceptation of wealth generally. Reserving a sufficiency for consumption until other moveable property be obtained, a man may give away his moveable effects. This is the whole meaning.

Some hold it established on the reason of law, that, setting apart a sufficiency to maintain, for a long period, the present members of his family, and their families, as determined by five prudent persons, a man may give away his immoveable property, and the excess of his moveable property above what is required for subsistence until other moveable property be obtained, as also determined by five prudent persons. This should be well examined, for neither opinion is expressly delivered by any author ; but the last opinion may be deemed consistent with settled usage.

JÍMÚTAVÁHANA does not admit the invalidity of a gift under these circumstances.

XIII.

YÁJNYAWALCYA :—Of precious *metals or* stones, of pearls, coral, *and other moveables*, the father has power to give or sell the whole ; but neither the father, nor the grandfather, shall aliene the whole of his immoveable property.

XIV.

The same : — *Land or other* immoveable property, and

and slaves *employed in the cultivation of it*, a man shall neither give away nor sell, even though he acquired them himself, unless he convene all his sons.

These texts, quoted by JÍMÚTAVÁHANA, merely forbid such gifts or alienations to show the immorality of the act, not to show the invalidity of the gift or alienation. To this remark JÍMÚTAVÁHANA subjoins its grounds: "because there is not in this case any property different from that which, in *the instance of other effects*, denotes a right of disposing of them at pleasure;" and the fact cannot be altered even by a hundred texts: therefore the validity of a gift of land, whether inherited from ancestors, or acquired by *the donor* himself, being admitted because the incumbent has ownership, the same would be established in regard even to the whole of a man's estate; for the ownership is not different.

It should not be objected, that if the validity of the gift, *as deduced* from ownership alone, cannot be barred even by a hundred texts, then gifts which NÁREDA declares void (LIII) would be valid; but if the nullity of this gift be established from the sense of the words "not given," the invalidity of that gift may be established from the sense of the words "what may not be given;" and the expression used in the text of YÁJNYAWALCYA, signifying disqualification, the invalidity of the gift may be established, as it is a gift by a person not entitled *to alienate such property*: in regard to what has descended from an ancestor, VRĪHASPATI will be quoted for the validity of the gift, if made with the assent of the coheirs (XVIII 4). It is ordained by YÁJNYAWALCYA and NÁREDA (LVIII and LIV), that, in certain cases, the act is invalid or null, and it is proper to establish the invalidity of such gifts: but the term "what may not be given," shows a moral offence, else "what may and may not be given" would not be separately propounded. The text of VRĪHASPATI signifies, that the gift has validity, because, being made by one not suspected of being influenced by lust or the like, it is excluded from the number of void gifts; and because there is no objection to its validity, since it is not the act of a person of unsound mind.

Be it any-how in regard to the whole of a man's estate acquired

by himself, but the gift of what has descended from an ancestor, by a man who has a son *living*, is void, because he has not independent power *over that property*; for NÁREDA declares null a gift made by one who is not *an independent owner*; and the law, quoted by VÁCHESPATI BHATTÁCHARYA and RAGHUNANDANA, declares a father not to be independent.

XV.

Smṛiti :—While the eldest brother lives, the rest are not independent; *but* seniority is founded both on virtue and on age :

2. All subjects are dependent, the king *alone* is free: a pupil is declared dependent; freedom belongs to his teacher :

3. All wives, sons, slaves, and unmarried girls are dependent: and a householder is not uncontrolled in regard to what has descended from an ancestor,

4. An infant (*śiśu*), before his eighth year, must be considered as similar to a child in the womb; but a youth or adolescent (*pógenda*) is called a minor until he has entered his sixteenth year :

5. Afterwards *he is considered* as acquainted with affairs, *or adult in law*, and becomes independent on the death of both parents; *but*, however old, he is not deemed independent while they live*.

The inference is wrong; for these texts do not propound a dependence invalidating civil acts. The sense of the text is this: while the eldest brother lives, (eldest in age if all be equally virtuous, or younger in age but endued with qualities fitted for the support of the family,) the rest of the brethren should not
1-2
give,

* Cited in this place without the name of the author; but the three first verses are quoted as NÁREDA'S, in the third article of the second section: the subsequent texts are cited from CA'TYA'YANA in Book I.

give, sell, or aliene at pleasure, *any part of the estate*, without his consent: the reason is, that, since they are maintained by his abilities, a gift or alienation, which may weaken his power to *maintain* them, would be immoral. All subjects residing with the king's assent on land owned by him, are occupied in the acquisition of wealth; with his assent they may possess land; and if it be seized by another, the king will compel him to restore it: therefore it is proper that they should make gifts or sales with his assent. As long as a pupil resides with his teacher, he should not even eat without his order, *because it is his duty* to please his teacher: thus it is recorded in the *Mahābhārata*, that UPAMANYA became blind from eating leaves of asclepias, when forbidden to take food. A student should not make a gift, sale, or other alienation, without his teacher's permission. Unmarried daughters, and other members of the family, are dependent; they can do nothing without the consent of the householder; for the master of the family partakes of the virtue and vice resulting from the acts of women. It cannot be established, that a gift of their own property, by these persons, is invalid without the assent of their respective superiors: nor does any one say, that, while there is a teacher, the student's gift of his own paternal property is invalid without the assent of his preceptor. Similarly, therefore, a gift made by a householder, though he have sons living, is valid without their assent, for it would be irregular to assign several meanings to the word dependent under the same head: but it is forbidden to give away, without the assent of the sons, property, whether moveable or immoveable, which has descended from the paternal grandfather.

The sense of the last text (XV 5) is, that the act of a minor under the age of sixteen years is invalid, because it is the act of an infant: after that age, his acts are valid; but it is necessary that he should take his father's orders. If it be said, that the sense of the text is this: after the age of sixteen years a youth is independent if his parents be dead; to prevent the validity of a sale or alienation by an infant under the age of sixteen years, whose parents are dead, or by a youth above that age, whose parents are living, two conditions are specified; his age of sixteen years, and the death of his parents: this interpretation is denied; for, the text mentioning that "he is *considered as acquainted with affairs,*"

affairs," shows him qualified for civil affairs in his sixteenth year, and independent on the death of his parents. If "minor" and "dependent" were held the same, then NÁREDA would not have distinguished a minor from a person who is not his own master (LIII 2): therefore, in that text, "not his own master" also denotes want of ownership, not merely the dependence of a son, slave, or the like; else it might be objected, that a gift by a stranger, not enumerated among void gifts, would be valid. But a "person who is not his own master" has been explained by authors "son, slave, or the like," not supposing that gifts might be made by strangers, but considering the possible doubt, whether, from near connection, the gift of a son, slave, or the like, be valid.

Dependence, declared in this text (XV), shows that consent should be taken: consequently a gift made to the injury of the family, thereby deprived of subsistence, is *nevertheless* valid, and the receiver may dispose of the effects at pleasure; but the donor commits a sin, and therefore he shall be fined, and must perform strict expiation. Such is the construction according to JÍMÚTAVÁHANA, and maintained by many *Gauriyas*: and JÍMÚTAVÁHANA remarks on this point, that the father has power over precious stones and other *moveables* inherited from the grandfather; and that it does not appear immoral to give away immoveable property exceeding the subsistence of the family.

If it be alleged, that a contract made by a person not independent is invalid; and since a contract made by a person who is not his own master is void (LIV), since the father is not independent in regard to what has descended from the grandfather, therefore his contracts in general being invalid, surely his gift is null: a contract made by a younger brother receiving food only, being invalid, surely his gift is null; as contracts made by such a brother are not allowed by the wife, so it is declared, that a father has not power to aliene the whole of his immoveable property (XIII): if this be alleged, it must be considered that "not independent" there means "not in his own power" (LIV); and a contract made by a person influenced by lust or the like, is void (LIII), because in this instance there is such a want of self-dominion, and that want of self-command prevents voluntary election. But that is not the case with a father in regard to wealth descended from the grandfather; for there is no-
thing

thing to prevent his voluntary action. As for the instance of the invalidity of a contract made by a younger brother receiving food only, this must be understood of a case where the younger brother has consented *to subjection*, or, from minority or other cause, is incapable of proper choice. Therefore this text (XV 1) may be well explained as coinciding with that which directs that the other brothers should live under the eldest brother; and these texts having been otherwise explained, and the gift of wealth inherited from a grandfather not being included under the title of Void Gifts, the text of YÁJNYAWALCYA (XIII) is considered as a *moral* prohibition of *such* gifts.

“The gift of a man’s whole estate is valid; for it is made by the owner: but the donor commits a moral offence, because he observes not the prohibition.” The *Smṛitīśāra*.

On the validity of these gifts two opinions are set forth; the subject will be further discussed under the title of What may be given (Sect. ii, Art. 1).

In fact, men waste all their estate, and even their persons, on the *solemnities at the birth of a son*; but from the text which expresses “a wife is a friend in the house of the good,” and from the advantage shown *in the married state*, greater affection is borne to the wife: the maintenance of her and of others being therefore requisite, how should a householder, destroying their subsistence, give his whole estate to another for civil purposes, unless he be insane or distempered? If the persons entitled to subsistence be not excessively vicious, and the householder, being mad, give away *his estate*, the donation is void; for a gift by an insane person is enumerated by NÁREDA among Void Gifts: but if those persons be excessively vicious, they forfeit their title to maintenance, and the donation may be valid even according to MISRA’s opinion. But if he make the gift, thinking virtuous persons to be vicious; then, since the householder could not distinguish right from wrong, his gift is not valid. The whole subject should be similarly examined: and if at any time it be contested whether such a gift be valid or null, it must necessarily be then determined which opinion is best.

If a king give the whole of his dominions to his eldest son qualified for the empire, although his other sons be void of offence, the gift is valid, provided it be the act of a prince neither insane
nor

nor otherwise disqualified ; for it is done in conformity with the practice of former kings (as shown in sacred and popular histories) without offence on the part of the other sons, or of their father. Thus DES'ARAT'HA * intended to commit his kingdom to RÁMA, in the presence of VASISHT'HA and many other Sages, and in presence of the citizens *at large*, although BHARATA and his other sons were faultless ; but afterwards, excluding RÁMA and the rest, he gave his kingdom to BHARATA, as a boon to CAICÉYI †. Even now it is seen in practice, that entire kingdoms are severally held by one prince, although he have brothers.

Some, remarking that the kingdom of AYÓDHYÁ was not divided, hold that kingdoms are indivisible on the authority of custom, although it be not expressly declared in the text of any Sage ‡. Though one kingdom may have been undivided, can the practice be grounded on the *Véda* ? may it not have been some custom accidentally *established* ? Let it not be said, that the consecration of the eldest son, to the exclusion of the rest, appears from the speech of VASISHT'HA in the *Rāmāyana* of VÁLMÍCI.

“ Among all the sons of ICSHWÁCU §, the first born
 “ is king : thou, son of RAGHU ||, art first born,
 “ and shalt this day be consecrated to the empire.
 2. “ This prescriptive law in thy family thou canst
 “ not now reject, O son of RAGHU ! Rule like thy
 “ father, far famed prince, the vast empire of the
 “ gem-producing earth.”

The difficulty is removed by limiting this rule to the posterity of ICSHWÁCU ; for he says, “ among the sons of ICSHWÁCU,” and adds, “ in thy family.” Shortly before *the passage quoted*, and after the curse pronounced by JÁBÁLI, VASISHT'HA says:

I 4

“ JÁBÁLI

* Fifty-fifth of the solar race.

† Wife of DES'ARAT'HA.

‡ This digression is not altogether misplaced ; for the great possessions, called Zemindaries in official language, are considered by modern *Hindu* lawyers as tributary principalities : and it might seem necessary to determine whether they be alienable and hereditary by the same rules with other landed property.

§ Son of MENU, and first of the family named Children of the Sun.

|| Fifty-third of the solar race.

“JĀBĀLI knows the course of this world; he has said this, wishing to dissuade thee.”

It is implied by this verse, that the Sages utter what is calculated to dissuade RĀMA from his intention of retiring to the forest, in compliance with his father's commands. It may therefore be said that the speech is adapted to dissuade RĀMA from his design of residing in the forest, and does not establish an *universal* law, that the first born shall take the kingdom. When RĀMA ascended to the abode of LACSHMĪ, his own sons, and the sons of his younger brothers, were severally consecrated to different portions of the empire: now RĀMA, wholly wise, and the instructor of mankind, did not act inconsistently with the law.

It should not be argued, that, among the descendants of ICSHWĀCU, the eldest may not have been *always* consecrated to the empire; but it was practised in the family of BHARATA*: thus when PANDU retired to the forest, his kingdom, governed by DHRĪTARASHTRA†, fell under the domination of DURYODHANA; but, recovered by BHĪMA and his brothers, was enjoyed by YUDHISHT'HIRA, and not shared by his brethren: therefore a kingdom is indivisible. But the inauguration of the sons of LACSHMANA, mentioned in the *Rāmāyana*, was not a consecration to the paternal kingdom, but to new dominions, given at the pleasure of the donor, and conquered by their father: thus the two sons of BHARATA were consecrated kings of *Gandharva*, conquered by BHARATA; the two sons of SATRUGHNA were consecrated kings of two cities founded in the forest of *Madhu*, which had been conquered by SATRUGHNA; and two cities, founded in the region of *Carapat'ha*, were given to the two sons of LACSHMANA. The younger brothers of RĀMA and the younger brothers of YUDHISHT'HIRA, *who were both* images of the supreme God and of deities, (*the first* born to slay RAVANA; *the latter*, to relieve the earth from *the* burden of a multitude of tyrants;) may have surrendered sovereign power, from respect to their elder brothers.

It is said, that the speech of YUDHISHT'HIRA to ARJUNA, in the *Mahābhārata*, is delivered with consideration of the respect due to ARJUNA and the other brothers, in the order of seniority:

“The

* Twenty-second of the lunar race. † The blind elder brother of PA'NDU.

“ The brave BHÍMA-SÉNA is worthy of dominion : what is empire to me, who am *thus* unmanned ?

2. “ I cannot bear these reproaches, which you utter in wrath : let BHÍMA be king ; I wish not to live, O Hero ! depressed as I now am.”

In answer to the objection, how can YUDHISHT'HIRA, speaking from his own affliction, be affirmed to respect ARJUNA as next in seniority ? It is added, that he acknowledged it on account of his dejection at his own unfitness for war ; and there is no intention of denying the seniority of ARJUNA : accordingly the consecration of the five sons of YAYA'TI*, an ancestor of BHARATA, is mentioned in the *Herivanśa* ; and the consecration of other princes, both in this and other families, is also mentioned in the *Herivanśa* and other works : such were NRĪGA, NARA, CRĪMI, SUVRATA and SIVI, sons of U'SINARA ; VRĪSHADARBHA, SUBĪRA, CÉCAYA, and MADRA, sons of SIVI† ; and MUDGALA, SRĪNJAYA, VRĪHADISHU, YÁVINARA, and CRIMILÁSWA, sons of VÁYÁSWA, and surnamed PANCHÁLA. The inference is denied ; for there is no proof that a partition was made of their paternal kingdoms : and it is difficult to establish the great respect shown by LACSHMANA and the other *brothers* of RÁMA, by BHÍMA and other *brothers* of YUDHISHT'HIRA, by DUHSÁSANA and other *brothers* of DURYÓDHANA, and by *all* others *similarly circumstanced*. If BHÍMA, ARJUNA, and the rest, through respect alone, surrendered the empire to which they were entitled, why did they not yield their *common* wife DRAUPAD'I to YUDHISHT'HIRA alone ?

But, in fact, a kingdom should be divided among virtuous brothers, able and willing to protect it ; for Sages have not inserted kingdoms under the title of indivisible property. It does not become men born in these days to imitate the conduct of RÁMA, YUDHISHT'HIRA, and others, who were endued with immeasurable strength, courage, self-command, virtue and knowledge, and were attended by VASISHT'HA and other Sages. The speech in

* Fifth of the lunar race.

† Descendants of ANU, son of PURU, and to whom the north was allotted by that prince. In the *Bhāgavata* four sons of U'SINARA are named : SIVI, VARMA, SAMI, and DACSHA.

in the *Rāmāyana*, (“among all the sons of ISHWÁCU, the first born is king, &c.”) is adapted to dissuade RÁMA from retirement in the forest; for SATRUGHNA divided and gave to his sons the kingdom which he acquired in the forest of *Mad’hu*.

Let it not be objected, that, were it so, VASISHT’HA would be a liar: for, adverting to the fact, that the first born happened, in *all* previous instances, to be consecrated to the empire, he mentions that fact. As it is not expressly declared that the sons of U’SINARA received the paternal kingdom, so it is not declared that they received any other than the paternal dominions. Consequently, there is no proof that a kingdom is indivisible: but those who are qualified to govern the realm, receive kingly power; and those who have great qualifications abandon the paternal dominions and conquer other realms, but do not re-assume the hereditary empire. The government of the realm, the protection of subjects, and the payment of tribute by modern princes subject to a paramount sovereign, may, in this view of the settled usage, be determined with little *exertion of intellect*.

We infer from a passage of the *Adhyātma Rāmāyana**, “a son who obeys not his father is dirt,” and another of the *Sri Bhāgavata*, “it is thy father’s command,” that the son who refuses his assent to the father’s gift of chattels, shall be restrained from such perverse conduct; nor is it questioned but he may have some share of the paternal effects. However, the history of kingdoms shows, that, to the exclusion of this son, one eminently endued with the virtue of justice, and other excellencies, is entitled to the royal authority. If the maxim, that a kingdom is indivisible, be not deduced from collections of law, still the kingdom would with difficulty be taken by all the brothers. Thus SÓMACA, descended from the PANCHÁLA, had a hundred sons; and DRUPADA, son of PRĪSHATA, the youngest of those sons, is mentioned as king in the *Harivansa*: of the rest not even the names are recorded. In the *Rāmāyana* of VÁLMÍCI, CAICÉYI thus

* Ascribed to VYA’SÁ. The passage, to which this short quotation alludes, is a speech of RÁMA, in answer to the reproaches of CAICE’YI: “Say not so; I would give my life for my father; I would drink deadly poison; I would forsake my wife ‘SÍTA’, or my mother CAUSALÍ; I would relinquish the empire. He who, unbidden, fulfils his father’s wish, is first of sons; he who does so when commanded, holds a middle rank; he who, though bidden, complies not, is vile as dirt.”

thus addresses MANT'HARÁ, distressed at hearing the *intended* consecration of RÁMA :

“ In RÁMA there is nothing inauspicious, nor is
 “ there malevolence in his great soul : have no
 “ apprehensions, therefore, hearing of RÁMA's
 “ consecration.

2. “ A hundred years after RÁMA, BHARATA shall
 “ surely obtain, in his turn, the kingdom of his
 “ ancestors.”

Here is intimated the regular succession of brothers to the kingdom of their ancestors, not their partition of the realm. Had she seen, or heard of, the partition of kingdoms, she would require for BHARATA a share of the dominions, not regular succession to the whole. It is evident that kingdoms in general were then indivisible.

Immediately after the passage quoted, MANT'HARÁ replies :

“ If RÁGHAVA * be king, his son, and after him another,
 “ other, and again another descendant will be
 “ kings.”

2. “ CAICÉYÍ ! BHARATA will be excluded from the
 “ royal race. All the sons of kings do not remain
 “ in obedience to the eldest :

3. “ But, of many sons, one only is consecrated to
 “ the empire. If all were kings, it would be the
 “ highest injury :

4. “ Therefore, spotless beauty, kings commit the
 “ affairs of government to their eldest sons, or to
 “ others more virtuous.

5. “ Doubtless they consecrate to the empire the
 “ eldest *by birth or excellence*, and never commit
 “ the entire kingdom to his brothers.”

In

* *Rāghava* ; general patronymick of the posterity of RAGHU, but here restricted to RÁMA, as in the speech of VAS'ISHT'HA to RÁMA, already quoted.

In answer to the supposition, that BHARATA might succeed after a hundred years, she says, “if RĀGHAVA (meaning RĀMA) be king, his son and remoter descendants will succeed; there will be no room for the inauguration of BHARATA: consequently thou erreſt*.” By this, CAICÉYÍ’s supposition is not confirmed; *on the contrary*, the title of the middle brother to succeed after the death of his elder brother, although he leave a son, which, from what CAICÉYÍ had said, might have been inferred as founded on scripture, is refuted. “The succession of RĀMA’s posterity will exclude BHARATA:” that is, no one of the descendants of BHARATA will be king. If BHARATA, obeying RĀMA, be supported by him like a son, will he share the empire, or *ultimately* obtain the whole? In answer to this, it might be asked, do all the sons of kings obey the eldest? In fact they do not: therefore BHARATA will not long remain in obedience to RĀMA; nor will he be allowed to share the empire. “Even among many sons, one only is consecrated;” that is, all the sons do not share the empire: how then should a brother *obtain a share after the eldest has gained possession of the whole*? Usage, not the scripture, is the ground of consecrating one son only. This she intimates *in the third verse*: it would be an injury, if all were consecrated; that is, the empire would be impaired by division, or strife might arise between the brothers, should they reside in separate dominions. Therefore, “kings commit the affairs of government to the eldest son.” May not the middlemost, or other son, be inaugurated? Since the eldest son, being first, cannot be passed over, his consecration is directed; but if he be vicious, another son, who is virtuous, may obtain the kingdom: consecration to empire is thus shown; therefore, *she adds*, the eldest son of RĀMA, and not BHARATA, will obtain the empire.

It should not be objected, that the speech of MANT’HARÁ is intended to excite discord, and is no authority. Such a disposition would not be excited in *the mind of* a hearer by the suggestions of a person speaking inconsistently with the reason of the law, with express ordinances, and with received usage: it may be affirmed, that the speech of MANT’HARÁ is not inconsistent with these three. It is consistent with the reason of the law; for she shows the argument of it: *and* it is consistent with settled usage;

* This gloss is somewhat abridged from the original.

usage; for VAŚISHT'HA subsequently declares, that, "among all the sons of ICSHWÁCU, the first born "is king:" and the doubt above mentioned, whether the declaration of VAŚISHT'HA be restricted to the posterity of ICSHWÁCU, is obviated by the general assertion of MANT'HARÁ.

It should not be objected, that, were it so, the allotment of a divided kingdom to the two sons of SATRUGHNA would contradict that assertion: and it would be inconsistent with an express ordinance (Book V, v. CCCLXVIII); for, in the want of express texts of law, partition by a father ought to be made in the same mode with partition among heirs. If no contradiction be apprehended, there is nothing to prevent partition: and the reason of the law has more authority in judicial procedure than *the letter of express ordinances*. Thus MISRA says, "civil law is indeed founded on reason, not on revelation;" that is, he does not lay much stress on the *Véda* in judicial decisions, (for a text of the *Véda*, on partition by a father, is preserved by BAUDHÁYANA;) but establishes the superior authority of the reason of the law, in comparison with *the letter of express ordinances*.

Some explain the second verse, "all the sons of kings do not retain life, when the eldest brother remains:" and they quote the remainder of MANT'HARÁ'S speech.

"RÁMA and LACSHMANA are closely united in
 "mutual friendship; their brotherly affection, like
 "the union of the twin sons of AŚWINI, is known
 "to the world*.

2. "RÁMA, therefore, will in nothing injure
 "LACSHMANA; but, doubtless, he will injure
 "BHARATA.

3. "Thy son, therefore, must hasten to the forest
 "from thy mother's house: such must be his fate."

"RÁMA does not regard BHARATA, as he does LACSHMANA:
 "the life of thy son (now residing in his maternal grandmother's
 "house)

* Literally, "RÁMA is closely united to the son of SUMITRA; and LACSHMANA, to the descendant of RAGHU;" to avoid ambiguity, the patronymicks are omitted, and the phrase shortened.

“house) will therefore be attempted by RÁMA, when he has obtained the empire ; and, to save his life, BHARATA must retire to the forest.” This they hold to be implied by this speech. But that exposition is wrong ; for it would be a vain repetition of what had been already said, and would be spoken without cause.

Therefore, should a father, hearing these instances from the *Purānas* and other works, commit the kingdom to his eldest or other virtuous son, the gift must necessarily be considered as valid, even according to the opinions of MISRA and others : there is no difficulty in asserting, that the nullity of gifts, as mentioned by them, supposes cases other than *the gift of a kingdom* ; for a different practice in respect of royal succession is mentioned in the *Rāmāyana*.

Should he commit the kingdom to his daughter's son or other remote heir, although his own son be void of offence, then indeed it should be determined as is proposed ; but, if he make a provision for the support of his other sons, and give his kingdom or other landed property to one son, then the gift is valid according to all opinions ; for his family is not *thereby* deprived of subsistence. It is not proper to assert that he who has power to give away the person of his son, has not power to give away immovable property without the assent of his son.

If, making a provision for sons void of offence, he give his kingdom to his daughter's son, or to a stranger, what is the rule in that case ? The gift even of a kingdom is valid, as it is of other landed property ; for no special prohibition, nor any such usage, is found in regard to kingdoms. But no father, who distinguishes right from wrong, would be so disposed.

If a king paramount, viewing the instances of kingdoms given by a father as above mentioned, give the whole kingdom to one brother, without intending an injury *to the rest*, he commits no offence, for he is equal to a father. But if the father die after giving away his kingdom, and the king paramount direct that it should be disposed of according to law ; in this case, it does not appear consistent with the reason of the law, that one brother should take the whole, without the assent of the rest.

What is the “subsistence of the family,” speaking of the sons of kings ? As much as each consumes in food and apparel : not merely enough to support life ; for, a man retiring to the forest may

may support life upon leaves, roots, fruit, and the like ; and the subsistence of the family, mentioned by all Sages, would be unmeaning. But, should another of the king's sons say, " needing as much food and as much raiment as this anointed brother, I give as much to the poor and helpless : these wants cannot be supplied *out of* that appanage ;" his claim should not be admitted by the paramount : no other, not even his father, can be equal to that *consecrated brother* ; for the law admits, *that a king is a portion of the divinity of INDRA* and other deities ; and royalty obtains much reverence. Even *Bráhmanas* pronounce the praises of kings : *Bráhmanas* reverend themselves, even in the sight of deities ; for, to them are duties committed ; to them are the *Védas* intrusted ; and to them is great favour shown by the supreme Ruler, because, contemning riches, they accept a subsistence on alms alone, in subjection to others. Thus, in the *Srí Bhágavata*, CRÍSHNA says of SANACHA and the rest :

" SRÍ*, for whose momentary regard others perform austerities, deserts not me, (though I need her not,) because I acquire merit from respect *shown* to these, the dust of whose lotos-like feet is holy, and who instantly remove every foulness†."

Though some modern priests are, in a certain degree, lessened by their misconduct, still great respect should be shown to them, in honour of former generations ; and because it is said *by a deity* in another *Purána*, " a *Bráhmana*, learned or unlearned, is my body : " it is not proper that one bound to respect should notice the faults of a person to whom reverence is due.

From apprehension of offending very great persons, it is not *here* examined whether some modern princes, who are not independent in the government of their subjects, but merely employed in levying the revenue of the paramount, should, or should not, be acknowledged as kings.

XVI.

* Abundance, or prosperity, personified.

† According to the gloss of SWA'MI, which it is unnecessary to translate.

XVI.

YĀJNYAWALCYA:—In distress for *the maintenance* of the family, *property* may be given away, except a wife or a son: but not the whole of a man's estate, if he have issue living; nor what he has promised to another.

What has been promised to one person in this form, "I will give it to thee," may not be given to another: but if the prior promise was made to a person not legally capable of receiving the gift, then it may be given to another; for a text (XLVII) shows, that there is no danger in withholding what has been promised to a person incapable of receiving. It is observed in the *Retnâcara*, on the text quoted (XLVII), that want of religious qualification incapacitates for *the receipt of* gifts: this will hereafter be discussed.

What is the rule, if a man give to one what he has promised to another? MISRA says, every gift of what has been promised is invalid. This should be examined; for, whence is it deduced? *It is said*, from the texts of YĀJNYAWALCYA and others (XVI, &c.): but the obvious meaning of these texts forbids the gift, as it does the donation of a wife, a son, and so forth: and MISRA himself says, that civil law is founded on reason; in proof of which the text of VRĪHASPATI is quoted:

XVII.

VRĪHASPATI:—A decision must not be made solely by having recourse to the letter of written codes: since, if no decision were made according to the reason of the law*, there might be a failure of justice.

And here, effects voluntarily promised by the owner not *immediately*

* Or according to immemorial usage; for the word *Yucti* admits both senses,

mediately becoming the property of another, the reason of the law is not applicable.

Should it not be established, that there is no independence in regard to what has been promised ; and thus the gift is null, because it is made by a person who is not uncontrolled? No ; for, in that instance, want of independence is not proved : the obvious sense of the texts of YAJNYAWALCYA and others *merely* forbids the gift ; and, in the title of void gifts, want of independence denotes want of ownership.

It is argued, that, from the term “ not his own master,” in the title of void gifts, it is not understood that he is not owner ; but wherever the term “ want of independence ” is technically employed, every gift by such a person, who is not owner of the chattel, is void ; for the text of MENU and YAMA declares null such a gift or sale *made by any other than the true owner* (Chap. II, v. XXVII) ; and sold is employed in the text of NÁREDA (Chap. II, v. XXVI) in the comprehensive sense of given, or otherwise aliened. Even a gift of his *own* paternal estate, by a pupil residing in the family of his teacher, may be void ; or, if his want of independence in regard to his patrimony be not admitted, and a gift or alienation of wealth acquired by himself, or otherwise, be then made, by a son whose father is living, without the assent of the father or other *superior*, some part of MISRA’S opinion should be admitted, though contrary to the opinion of JÍMÚTAVÁHANA : and as for what has been said, that want of independence, in respect of what has been promised, is not proved ; *even* that is not established by the texts of YAJNYAWALCYA and others : thus, if he be independent, how should he be fined? The amercement for a gift of what has been promised to another, proves his want of independence ; it is not consistent with common sense, that a man should be fined who gives that in respect of which he is uncontrolled : neither his want of ownership, understood from the term “ want of independence,” but subjection to another ; and, in the dictionary of AMERA, independent, or his own master, is opposed to dependent, or subject to another : in like manner, a gift of female property by a wife, without the assent of her husband, is not valid ; but the gift of female property by a wife, on a general permission to give *presents*, is valid ; it is not required that the number or quantity be specified :

specified: but, for a gift of her husband's property, it is requisite that the number or quantity be specified in this form, "give so much wealth:" this distinction does exist; yet the term "exclusive dominion" is applied to female wealth; or the woman has exclusive dominion, as declared by the text, "the absolute exclusive dominion of women over nuptial gifts is perpetually celebrated:" and the same law is applicable even to other persons, who are technically described as "subject to control."

All this argument is contradicted, for even MISRA does not proceed to so great a length in regard to the separate property of a woman; and gifts of their own effects by subjects without the assent of the king, and by younger brothers without the assent of the eldest brother, are seen in hundreds of instances.

Therefore, should a man give to one what he has promised to another, the last donee shall obtain the effects; but the king shall impose an amercement on the donor. It is not, however, expressly ordained, that an equivalent shall be given to the person to whom the promise was made. If the first promise be made for civil purposes, and the thing be afterwards given for religious uses, what is the law in that case? The answer is, NAREDA, premising gifts for civil purposes (II 2), and declaring unalienable what has been promised to another (IV 2), merely forbids the giving, for such purposes, what has been promised to another: it follows, that there is no offence in such a gift for religious uses, and that the gift is valid. But, in fact, should a man fraudulently give, for religious purposes, what has been promised to another, although he have other effects proper to be given, and do not satisfy the person to whom the promise was made, it is consistent with common sense that he should be amerced. This will be further examined in another place.

SECT. II.—*On Alienable Property, and on Valid or Irrevocable, and Invalid or Void Gifts.*

ART. I.—*On Alienable Property.*

XVIII.

VRĪHASPATI :—A man may give what remains after the food and clothing of his family: the giver of more, *who leaves his family naked and unfed*, may taste honey at first, but shall afterwards find it poison.

2. Of houses and of land, acquired by any of the seven modes of acquisition, whatever is given away, should be delivered, distinguishing *land* as *it was* left by the father, or gained by the occupier himself:
3. At his pleasure he may give what himself acquired; a pledge must be disposed of by the law of pledges, *or subject to redemption*; but of property acquired by marriage, or inherited from ancestors, not every gift subsists*.
4. *But* if what is acquired by marriage, what has descended from an ancestor, or what has been gained by valour, be given with the assent of the wife, of the coheirs, or of the king, the gift has validity.
5. Heirs have a lien equally on the immoveable heritage, whether they be divided or undivided; and a single parcener has no power to give, pledge, or sell the whole.

* According to another interpretation, "the whole ought not to be aliened."

The last text is attributed to VYÁSA by JÍMÚTAVÁHANA ; and *herein* RAGHUNANDANA follows him. What exceeds the food and clothing required by the members of the family, who are entitled to maintenance as above mentioned, may be given away. Otherwise, the family wanting food and clothing *in consequence of more being given*, the donor's conduct is not virtuous.

“ There is sin in the gift of what does not exceed, and virtue in the gift of what does exceed, *the proper food and clothing of the family.*” MISRA.

It is intimated, that what does not exceed the maintenance of the family, should not be given away, even for religious purposes ; but it is also intimated, that the gift of what should be appropriated to the food and clothing of the family, is valid. “ The giver of more may taste honey at first :” by this it is intimated, that bliss is at first obtained ; thence it follows, that the religious purpose is accomplished ; and that purpose cannot be accomplished unless the gift be valid : therefore the gift appears to be valid.

In the *Smṛitífāra* the validity of the donation is admitted : “ a man's own gift is valid, because he has property, which is the established cause of validity.” But it is not admitted that the religious purpose is attained ; for he has not observed the commands of the law.

Some hold, since the text directs that a man should give what remains after feeding and clothing his family, and since it is not applied as an exception to the gift of more, therefore his duty is not fulfilled if he give not what exceeds the food and clothing of his family. But this does not seem proper ; for the text relates to civil affairs, and it is irregular to ground on it a rule for *religious* gifts. A cause of failure in religious merit does not establish demerit. Thus, the bathing in the Ganges being accidentally accomplished, in neglect of advice not to go that way to the Ganges, by which was implied the danger of meeting tigers or the like, the religious purpose is *nevertheless* obtained ; but it is not obtained by the gift of property belonging to another owner ; for this is not a gift in the form of a relinquishment, vesting property in another after divesting his own.

According to the opinion of those who maintain the invalidity of the gift, the religious purpose is not obtained. But the expression

pression "the giver may taste honey at first," is not taken literally. His conduct in delivering his whole estate into the hands of another may at first favour like honey, by affording mistaken pleasure, or causing present satisfaction; but afterwards it becomes poison, because it is punished in a region of torment. There is no difficulty in considering this as relating to civil gifts. But it may be applied indiscriminately to religious merit: otherwise, the gift or sale being sinful, but religious merit cancelling the sin, or himself not being born again, the religious merit of the donor would be inconsistent with his "afterwards finding it poison."

According to the opinion of MISRA, this text may imply the invalidity of a gift, where a man's whole estate is given; and, according to the opinion of JÍMÚTAVÁHANA, it may imply that the gift is valid.

XIX.

CÁTYÁYANA declares what may and may not be given:—Except his whole estate and his dwelling-house, what remains after the food and clothing of his family, a man may give away, whatever it be, *whether fix or moveable*; otherwise it may not be given.

"His dwelling-house;" one house, without which he himself, or his family, might want a dwelling. It is meant generally, comprehending a pond supplying water for common use and the like.

Is not the excess above the subsistence of the family unmeaning, after excepting the whole of his estate? It should not be said, a gift of his whole estate might be made with a reservation of a single shell only. Were it so, his whole estate would be an unmeaning exception. Nor should it be said, the gift of the whole estate is excepted to prevent the possible gift of his whole estate by a man able to maintain his family on alms; for there is no authority for such an inference. It is not established, that a man able to subsist his family on alms, or the like, may not give

away his whole estate: for it is the meaning of the ordinance, that the family should be any-how supported.

Some observe, that a man, though able to maintain his family on alms or the like, ought not to give away his whole estate; for, should alms or other means at any time fail, his family might be distressed. Still, what can be understood from the expression his "whole estate?" The whole estate should be understood in the mode already mentioned; that is, the whole of his effects, including what is required for the maintenance of the family until other property be gained. Such a meaning is deduced from the sequel, "what remains after the food and clothing of his family." Or the excess above the maintenance of the family is expressly declared, *to provide* against the attempt of giving away even a trifle, when the family is but ill maintained out of the whole estate. Consequently, the gift even of a trifle, if it be not an excess above the subsistence of the family, is forbidden. Or the text may be read, "*sarvaswam grīha varjitam*," instead of "*sarvaswa grīha varjantu*." Consequently the whole of his own property (except his dwelling-house) that remains after the food and clothing of his family, a man may give away; such will be the sense of the text. "The whole" is there mentioned to show that moveables and immoveables are not distinguished. "His own;" by this term, deposits and the like are excepted; the sense is, his own several property; by which joint-property is also excepted. In concurrence with other Sages, a distinction must be understood in respect of a thing promised, a wife, or a son. Here the condition expressed in the text concerning alienable property, that it must exceed the subsistence of the family, shows, that the gift of what does not exceed the subsistence of the family is not valid; and the declaration, that joint-property may not be given, shows, that the gift of several property is valid. As in the command for performing a *śrāddha* at the conjunction, it appears, from the authority of the prohibition against performing a *śrāddha* at night, that the *śrāddha* or obsequies should be performed at the conjunction, but not at night; and that no benefit arises from a *śrāddha* performed at night: so they hold MISRA's meaning to be similar.

Where the benefit of an act is deduced from the *Vēda* alone, the means of obtaining that benefit are established in conformity with

with the rule commanding a time different from night ; and the benefit is not obtained unless a time other than night be taken : for there is no ordinance showing benefit from a *śrāddha* performed without observing that distinction. But here the obligation of making gifts is deduced from the *Vēda* ; and a sufficient cause of property in the donee is found in the fact of the gift ; but property cannot vest in another person, unless previous property be annulled : therefore, that being established, *the transfer of property* is established on the intention of the donor to make a gift. By logical inference, gift being sufficient cause of annulling previous property, excess above the subsistence of the family cannot be made a condition by words alone, for perception arises from words and logical inference jointly ; and it is difficult to establish another opinion. Such are the sentiments of those who follow the opinion of JIMÚTAVÁHANA.

“ By the seven modes of acquisition ” (XIX 2). The modes of acquiring wealth are declared by MENU.

XX.

MENU : — There are seven virtuous means of acquiring property ; succession, occupancy or donation, and purchase or exchange, conquest, lending at interest, husbandry or commerce, and acceptance of presents from respectable men.

The causes of gaining wealth are these. “ Succession,” or inheritance of property, as the term is explained in the *Vivāda Retnācara* and *Vivāda Chintāmeni* ; that is, property received in right of affinity and relation. “ Occupancy,” or gain ; the finding of a waif or the like. “ Conquest,” explained in the *Retnācara*, victory over an enemy in battle. Consequently, what is gained by success in gaming, or the like, is excepted ; it is a dishonest acquisition, for it partakes of the quality of darkness. The very same opinion is intimated in the *Chintāmeni*.

Three, succession, occupancy, and purchase, are allowed to all classes ; conquest is peculiar to the military tribe ; lending at interest, and husbandry or commerce, belong to the mercantile profession ;

fession ; and acceptance of presents from respectable men, to the sacerdotal class. These are virtuous means of acquiring property : but, on failure of these, priests and the rest may subsist by other means allowed in times void of distress, such as husbandry and the like ; or on failure of these, by the best modes allowed in times of distress.

CULLÚCABHATTA.

XXI.

MENU :—Learning, art, work for wages, menial service, attendance on cattle, traffick, agriculture, content with little, alms, and receiving high interest on money, are ten modes of subsistence.

In the *commentator's* gloss, which follows the text above quoted, declaring these to be the modes of subsistence in times of distress, *he shows that* each of these modes of subsistence may be followed in times of distress by the person to whom it is forbidden in other circumstances : as work for wages, menial service, and the like, by a man of the sacerdotal class ; and so of arts and the rest. “ Learning,” (except that contained in the scriptures,) as medicine, philosophy, *charms* counteracting poison and the like, practised for subsistence by all classes in times of distress, is no offence. “ Art,” as painting and the like. “ Content with little ;” for with content a man may subsist on his own, however little. “ Receiving high interest on money ;” lending on interest even in person, and so forth. By these ten modes a man may subsist in times of distress. Consequently a priest in *great* distress may depend even on menial service, arts, or the like, for his subsistence. Such is CULLÚCABHATTA's interpretation : but others argue, that, after declaring, in the first text (XX), the modes of subsistence in times void of distress, this text (XXI) intends the modes of subsistence in times of distress, implying the preservation of life *only*. That, however, in its consequences, coincides *with the opinion of* CULLÚCABHATTA.

But others *again* hold, that the practice of *Vaisyas* is allowed, by the following text, to a *Bráhmāna* in times of distress ; but is on no account *allowed* in other seasons : for, assisting to sacrifice, teaching

teaching the *Vēdas*, and receiving gifts and so forth, are declared to be the means of subsistence for a *Brāhmana*.

XXII.

MENU:—But a *Brāhmana*, unable to get a subsistence by either of those employments, (*his duties just mentioned, or the duty of a soldier,*) or a *Cshatriya*, unable to subsist by his own occupations, may subsist as a mercantile man, applying himself *in person* to tillage and attendance on cattle*.

And here it is irregular to give such an interpretation to this text (XXI); for it is declared, that the modes of subsistence delivered in the tenth chapter are legal in times of distress: “Such as have been fully declared, are the several duties of the four classes in distress for subsistence:” and the virtuous modes of subsistence for a *Brāhmana* in such circumstances, are declared in the text *first quoted* (XX); since the modes of subsistence for a priest alone are declared, beginning with the text, “Should a *Brāhmana* afflicted and pining through want of food choose rather to remain fixed in the path of his own duty, than to adopt the practice of *Vaishyas*, let him act in this manner,” and ending with this text (XX). Immediately after it, the modes of subsistence for a *Cshatriya* in distress are delivered in the text quoted (XXI); and, next to that, a distinction is declared in regard to interest on loans, which both texts permit the *Brāhmana* and the *Cshatriya* to receive.

XXIII.

MENU:—Neither a priest, nor a military man, should receive interest on loans: but each of them, if he please,

* See MENU, Chap. x, V. 82. In quoting the text, the compiler has omitted the question, and inserted the words “but a *Brāhmana* or a *Cshatriya*.” on this reading, it has been necessary to interpolate the text, because both employments are not allowed to the *Cshatriya*. T.

please, may pay small interest, for some pious use, to the sinful man who demands it.

Immediately after this text, the proper subsistence of a *Cshatriya*, in times of distress, is particularly mentioned; as the proper subsistence for the *Bráhmāna*, in such seasons, is mentioned in the texts, "Should a *Bráhmāna*, afflicted and pining through want of food, &c." But in all these texts a *Vaisya* is not even named; and a *Súdra* is subsequently noticed: how then can the text, "there are seven virtuous means, &c." (XX) relate to the four classes? The answer is, YÁJNYAWALCYA has in many places delivered a text applicable to the *Cshatriya*, and similarly describing ten modes of subsistence.

XXIV.

YÁJNYAWALCYA : — Agriculture, art, work for wages, science, receiving high interest on money, *the use of a carriage, retirement in mountains, service of kings, the office of king, and alms, are modes of subsistence in times of distress.*

Before this he declares the subsistence of a *Bráhmāna* in times of distress.

XXV.

YÁJNYAWALCYA : — A priest, *when* oppressed by calamity, eating food received from any man whomsoever, is not tainted by sin; for he is equal to the igneous sun.

Therefore the text, "There are seven virtuous means of acquiring property" (XX), describes the virtuous means of subsistence for a *Bráhmāna* in times of distress; and the text, "Science, art, &c." (XXI), describes the virtuous means of subsistence for a *Cshatriya* in such circumstances: and there is no
vain

vain repetition in *twice mentioning* lending at interest, and husbandry or commerce, explained by CHANDÉSWARA, VACHESPATI, MISRA and CULLÚCABHATTA, receiving high interest on money, and agriculture or traffick.

It should not be objected, that conquest and the like cannot be virtuous means of acquisition for a *Bráhmāna*: for MENU declares, that the highest beatitude may be attained by *Bráhmanas* practising, in times of distress, the duties propounded for *Cshātriyas* and the rest.

XXVI.

MENU:—Such as have been fully declared are the several duties of the four classes in distress for subsistence; and if they perform them exactly, they shall attain the highest beatitude.

This opinion should be well examined.

It seems to be declared by the text of VRĪHASPATI (XVIII 2), that property partaking of the qualities of passion and darkness is unalienable. CHANDÉSWARA makes no remark on this point. But MISRA says, “the expression is comprehensive: he may aliene, at his own pleasure, his own several property any-how possessed; but property, *held* in coparcenary with another, cannot be aliened without the consent of the coparcener.” MISRA’s meaning is, that the words of VRĪHASPATI, *who was* profoundly versed in the law, intend property legally acquired, and do except any *several* property from unalienable things, but do not except from alienation property acquired by other than those seven means.

As for the distinction declared by NÁREDA in regard to property partaking of *the qualities of* truth, passion and darkness, the ranking of usury and the like under the quality of darkness is pertinent, as it relates to *Bráhmanas* and the rest in times void of distress.

XXVII.

NÁREDA:—*What is* acquired by teaching the *Védas*,
by

by courage, or devotion; *what is received* with a damsel, from a pupil, or for a sacrifice; and *what is obtained* by inheritance, are celebrated by Sages as the seven-fold *distinction of* pure property.

2. What is gained by usury, agriculture and traffick, or *received* as tolls or as wages for singing, or *as a return* for a benefit conferred, is considered as property partaking of the quality of passion.
3. What is acquired by servile attendance, by gaming, by robbery, by *inflicting* pain, by disguise, by larceny, and by fraud, is considered as partaking of the quality of darknes.

Whatever *several* property, acquired by any of these modes, is given away, even that was alienable; and the same should be observed of property acquired by art and the like (XXI), and so in other cases. Such exactly is MISRA's meaning.

"Houses and land, acquired by any of the seven modes of acquisition" (XVIII 2), is an expression used comprehensively. In the case of other moveable or immoveable property, if land, a house, or the like, be given away, it should not be resumed: this the Sage intends to express. Consequently, should chattels deposited, or the like, be given away, the gift should be retracted. Such is the whole meaning. "As it was left by the father or gained by the occupier himself," is subjoined to limit the rule; and is elucidated by the next verse (XVIII 3). Such is the consistent method of authors.

But others explain acquisition, the means by which wealth is gained; intending property acquired by the means described in texts which show virtuous and other modes, such as purchase and the like. Those several means, in which an act of the receiver is requisite for the acquisition, must be considered as the seven modes: and one is included in another; as robbery, larceny, the business of usury, and so forth. Consequently the number of seven is not contradicted. Left by the father signifies inheritance only; and gained by the occupier denotes the receipt of gifts and the like; it is meant of cases where no act of the receiver

ceiver in expectation of gain is necessary to the acquisition : and property partaking of the qualities of passion or darkness, is, without difficulty, comprehended in the text.

A distinction is propounded (XVIII 3) relative to property acquired by the occupier himself, which the former text had declared alienable. What is acquired by a donee, without relation to another, may be given at his pleasure, even without the assent of sons, brothers, and the rest : and the distinction is derived from the text quoted by JÍMÚTAVAHÁNA (XIV). Immoveable property, as land or the like, and a corrody in the form of a fixed allowance, payable by the king or other person, and bipeds or slaves and the rest, a man shall neither give away nor sell, even though he acquired them himself, without the consent of all his sons. Such is the sense of the text (XIV).

Is a bird unalienable or not ? Since it appears from the word "biped," that even a bird may not be given without *the* assent of heirs, should it not be *held* unalienable ? No ; for, VRĪHASPATI shows that a decision inconsistent with the reason of the law must be avoided (XVII). On immoveable property, such as land or corrodies, children may be long subsisted. As it causes unlimited production of wealth, it is called an estate, or *funds of support* : the loss of it is pronounced dishonourable in a text of NÁREDA (XII) ; and the gift of it, without the assent of sons and others using the estate, is called loss in *this* text. Now a slave is such ; for, by agriculture or the like he is able to gain much wealth for his master. It should not be objected, that great riches may be acquired even by receiving high interest on gold or the like. Though *gold*, lent at a high rate of interest, may be equal to immoveable property, *affording wealth* like the alchymist's stone, or like the gem which daily produces gold, yet, if it be not lent at interest, there is nothing to prevent alienation. Or it may be understood, that if a contract be made for interest, *then gold or the like*, producing wealth by means of that contract, should not be given away. If that be the case, may not wealth be acquired, in some instances, even by means of birds ; for example, by the advanced price on birds well taught ? This should not be granted : were it so, the same might be extended even to quadrupeds, such as sheep and the like, and bulls or other animals employed in husbandry. If it be argued, that land, a corrody,

rody, or the like, may be understood to be declared in the text by the word "immoveable;" and slave, bird, or the like, by the word "biped:" (for it is a rule not to strain a text; and when the literal sense of the terms suffices, there is no occasion for recurring to the reason of the law; and the text of VRĪHASPATI *therefore* is not applicable in this instance :) the answer is, dissimilar rules in respect of birds and sheep, entitled to equal consideration, would be inconsistent with common sense. *Men of some mixed classes* subsist by the exhibition of snakes; should they give one away without the consent of their sons, it would appear to be a loss of the estate: yet a snake is not a biped. Since the sons and the rest *of the family* might be maintained, even after giving away a snake, by catching another, may it not be said that there is no loss of estate? The same might be alleged in regard to a gift of land by *Brāhmanas* and others. As land is dependent on the king, may not the sons and others recover it, and thus be exempt from difficulties? Be it any-how in this instance; but those who subsist by the exhibition of apes may fail in catching another, and *thus* be reduced to difficulties, for by labour must this end be attained; and it cannot be accomplished without much toil in the display of science, *and exertion of art*. On this subject it is said, whatever mode of subsistence long maintains persons of a *particular* class, even that is their real estate, *and* is intended by the word "immoveable;" biped literally signifies a bird, a man, &c. and these may not be given without the consent of *the donor's* sons. This finally is the sense.

It is argued that particular birds, being valuable bipeds, and slaves, being endued with excellent qualities and the like, may not be aliened without the consent of sons. It should not be objected, that a thing *sold* for any price may be valuable. Whatever bears a greater price, compared with other things of the same nature, is costly. Nor should it be objected; in comparison with what must it bear a higher price? If it be said, in comparison with any bird; then, even what does not commonly bear a great price, may be dear in comparison with a bird accidentally sold for a less sum: and thus, that *only* is cheap, in comparison with which no bird has borne a less price; and all others are dear: and, since low-priced birds may be scarce, or all may be valuable, such great refinement would be fruitless. A very high

high price may be distinguished, with the king's consent, by comparison with the cost of birds accepted by persons in general; and so in other cases. This exposition may be questioned; for, great value is not implied, by the reason of the law, in declaring immoveable property and the like to be unalienable. Thus it is not consistent with approved usage, that, by a comparison with land measuring twenty cubits, deemed valuable in comparison with the quantity of a *pala* of gold, land measuring a single cubit should be aliened at the pleasure of the occupier alone. This and other points may be discussed in many ways.

“ A pledge must be disposed of by the law of pledges ” (XVIII 3). As his own interest *in the pledge*, such should he make another's. The *Retnácara*.

The meaning is this: any man pawning a chattel, receives a loan from some person; if the creditor give that pledge to *another* person, then the gift of the pawn is the same with a gift of the debt: therefore, as the debtor paying his debt to his creditor might redeem the chattel, so, in this instance, paying the debt to the donee he recovers the chattel. It is mentioned to make it evident that a debt *demandable* may be given away or sold. In fact it is included in what may be given at pleasure. Consequently, if a pledge be received for a loan of paternal wealth, it is subject to the law concerning patrimony; but if it be received for a loan of what was acquired by the man himself, it is subject to the same law with his own acquired property. Thus some expound the law. MISRA explains this clearly. The form of *transferring a pledge* is subjoined, “ this thing was pledged to me, and is given by me to thee; it must be restored by thee to the owner, on receiving the amount for which it was pledged.”

But others hold, that, in the case above mentioned, when a debtor gives to any person a chattel which is in pawn, then the donee may obtain that chattel after payment of the debt: that is, as the debtor had an interest, or restricted property, in the thing pawned, so has the donee; and after the death of the donor, on failure of his sons or other successors to his estate, should the creditor or his issue be living, the donee, wishing to obtain the pledge, may receive it on payment of the debt. This in effect follows from what has been said; for, unless payment of the debt be the condition, there would be no restriction to property in the pledge: and

and RAGHUNANDANA observes, in the *Dáyabhāga tatva*, that, “if the pawn remain unredeemed on the death of the seller or donor, then, since a property similar to that of the contracting party has been vested by sale or gift, the buyer or donee should redeem the pawn.” Here, if the chattel pledged belong to the paternal estate, it is subject to the law respecting patrimony; but if it were acquired by the man himself, it is subject to the law concerning such property.

In these two opinions a mutual contradiction arises; that is, after a gift or sale of a pledge by a fraudulent debtor, on his death, and on failure of sons or other heirs, the payment of the debt by the donee or purchaser *according to one opinion*, or non-payment of it *according to another*, is in either case an unjust disparity. The question may be thus discussed: in regard to the donee, be it as it may be; but a purchaser, having paid a fair price, would suffer great loss if he must again pay the debt with interest, which would be inconsistent with common sense: therefore he may obtain the pledge without payment of the debt; and such a rule being equitable in the case of a purchase, the same may be established in the case of donation. It should not be objected, that the loss falling on the creditor, who advanced his own money, and long preserved another's chattel, would be inconsistent with common sense: a similar loss falls on the creditor, after the death of the debtor, if the pledge have been destroyed by the act of GOD or the king, or by the fault of the debtor. Nor should it be objected, that, where a thing already transferred to another is sold, the loss falls on the purchaser: the debtor has not transferred the thing *to his creditor*. Nor should it be objected, that, in this instance, the pledge is not destroyed by the act of GOD or the king: the sale of the pledge is a fault on the part of the debtor, *by which the pledge may be lost to the creditor*.

XXVIII.

Smṛiti, quoted by CHANDÉSWARA and RAGHUNANDANA:—If a man, having bailed or pledged a thing to one person, pledge or sell it to another, the last act shall prevail.

Otherwise,

Otherwise, since the mortgage is cancelled by the redemption of it, there may be no obstacle to a valid gift or sale, even though a mortgage prevail. It should not be objected, that, supposing it to prevail, should a gift or sale be made after it, that contract would not be valid, even though the pledge be subsequently redeemed; for it is resisted by the mortgage, which was in full force when the gift or sale was made: but now, such a contract, made while a mortgage subsists, is valid, and the donee or buyer may dispose of the thing at pleasure, when it has been redeemed; and thus should the force of donation or sale be admitted. Then it would be proper to say, that, both being good in law, both have equal force. As a depositary cannot withhold from the purchaser a chattel, which had been bailed to him to be kept ten months, and which is afterwards sold within that period, so a mortgage is cancelled by the *superior* force of a sale: therefore the purchaser can take the chattel from the creditor; and the debt remains unsecured by a pledge. But if the purchaser bought the chattel, knowing it *to be mortgaged*, he must necessarily be punished by the king; else, from the state of the times, established usage in regard to loans would be now infringed by the audacity of knaves. Contracts of sale, mortgage, and the like, must necessarily be made in the presence of the king's officers, and should be recorded by them. Yet if they were not present, but another person, who was by, prove the contract, the predominance of a sale, where mortgage is opposed to it, is declared by RAGHUNANDANA himself: "what has *superior* force, even that is good in law." But here mortgage resists the owner's *power of* disposing of his effects at pleasure, and is not preceded by the annulling of property: and therefore, whether prior or subsequent, it is superseded by donation or purchase, which are preceded by the annulling of the former owner's property, and have *superior* force. By the word "even," in the phrase "even that is good in law," the invalidity of a weaker contract is intimated: and here the mortgage, as a weaker contract, being invalid, what should prevent the purchaser obtaining possession of that which is now become his own?

If it be said, since the expression 'mortgage resists the owner's power of disposing of his effects at pleasure,' intimates an opposition to gift, sale, consumption, and many other modes of disposal; therefore a sale, though valid while a mortgage subsists,

does not authorize the purchaser, now *become* owner, to dispose of the thing at pleasure: it is answered, the sale would not then be valid. Nor is this apprehended by RAGHUNANDANA; for it would disagree with prior and subsequent works *of the same author*: therefore, opposition to disposal at pleasure is *effected* by restraining a debtor, who attempts such an act, by means of the king's officers; not by preventing a purchaser, who is not liable for the debt, from disposing of the thing at pleasure. But the purchaser should see the thing, and *have reason to suppose* it is not pledged to any man when he pays a price *for it*, else he is punishable; such is the induction of common sense: and he should obtain immediate possession; for the sale may become void through want of possession during a long space of time, and the mortgage would then be *exclusively* valid.

In this instance, the creditor obtains another pledge from the debtor; or the debt should be immediately discharged. If the debtor die, the creditor may receive it from his son or grandson, or he may recover it from any other property whatever left by the debtor: he cannot withhold that pledge from the purchaser; for no ordinance *permits it*.

RAGHUNANDANA remarks on the text above quoted (XXVIII), that the word 'sell' *also* denotes gift annulling property. Consequently gift, sale, barter, and all other *contracts* divesting property are intended.

The moderns hold, that if a man sell a valuable pledge for less than its worth, *that is*, less by the amount which is applicable to the redemption of the pledge, and with an agreement in this form, "on redeeming the pledge, thou shalt have it;" or if he make a gift or other alienation, with the same stipulation; then the pledge should be redeemed by the purchaser or donee, in conformity with the text of YÁJNYAWALKYA (Chapter II, v. XXVIII). But in regard to pledges, since the owner's property subsists, it appears that there is a distinction. Thus, where two contracts of *gift and* acceptance occur, since the property of the former owner is divested by the first donation, the gift last made by him is not valid, for it is made without ownership; and so in regard to sale. But this is actually the foundation of validity in the gift or sale of a thing bailed or pledged, as *declared* in the text *lately quoted* (XXVIII): therefore, should the

the same thing be hypothecated to two creditors, the validity of the last mortgage cannot be reversed, for it is made by the owner; and the validity of the former hypothecation being admitted, because it was also made by the owner, they may be equally good; but the first has not superior force, since a decision inconsistent with the reason of the law is forbidden by VRĪHAS-PATI (XVII). Therefore, even in a contract of mortgage, some distinction respecting the property in the effects must necessarily be admitted, under the authority of which even the purchaser of those effects may not dispose of them at pleasure before the mortgage is redeemed. Such is the sentiment of RAGHUNANDANA.

What is the distinction? Not a specifick difference inherent in property: for such a difference cannot be therein admitted, fluctuating with the variations of time; since specifick difference constitutes permanent species, and species is not regulated by time, produced with the production of substance, and destroyed with its destruction. Nor can another property arise therein; for there is a want of the requisites *to constitute a title*. Let it not be argued that the distinction is individual, because the *Mīmāṃsacas* do not acknowledge genus and species separate from substance. There is no proof of such individual distinction.

It is said, the intention *of the parties* constitutes the distinction. Thus, when a thing is pledged, the debtor intends, and expresses in words, "let this chattel, belonging to me, remain with him; until the period expire, it shall not be enjoyed by me or my relations:" and therefore, by virtue of that *declared* intention, even a purchaser, like the debtor's heir, is debarred from the enjoyment of that chattel. Thus established usage in regard to loan and payment would not be infringed. Otherwise, no man would make a loan, apprehending that the debtor would sell to another what he pledged to him.

If it be said, as a bailment, made by the owner for a specifick period of ten months, is cancelled by a subsequent contract of sale; and setting aside the former owner's intention, (that it should remain with the depositary to the end of ten months,) it must be delivered at the will of the present owner: so, even in this case, setting aside the act of the former owner's will, it must be delivered at the pleasure of the present owner; else the enjoyment of chattels pledged by a herdsman's wife, as authorized by

her former lord, might subsist without the assent of her second husband: the answer is, the intention of a bailment made for safe custody only has little force, and is consequently superseded by the stronger will of the actual owner; and therefore delivery is proper in that case: but here, the intention of a pledge, being inferred from the loan, retains its force until the loan be repaid; and therefore it is not superseded: and the enjoyment of a thing pledged by a herdsman's wife, being authorized by her former lord, is honest.

This is confirmed by the opinion of RAGHUNANDANA: and the author of the *Mitâcsharâ* in effect admits the debtor's ownership in the pledge. According to the modern opinion, when a thing is twice hypothecated, the predominancy of the first hypothecation is founded on the pledge not being relinquished by the creditor who has received it.

From the text cited in Book I, (v. CCLXXI), it appears that the produce of a thing held by one creditor is applicable to the payment of the debt due to him, although the debtor have the ownership of it: or what has been artfully obtained by a creditor from his debtor, is applicable to the payment of the debt due to that creditor, not to any other. In this case, if a loan have been advanced on a pledge, the first lender is considered as entitled to the thing, not the last creditor. But this lender cannot be said to have a stronger title than a purchaser; for no ordinance declares it. By adequate punishment inflicted in such instances on the buyer and seller, the king may relieve the fears of lenders.

“Property acquired by marriage” (XVIII 3), supposes also what is gained by valour. Not every gift, with or without consent, subsists: therefore gifts of those three kinds of property, as mentioned in the subsequent text, must be made with reference to the consent of others. The *Retnâcara*.

The meaning is, that the terms of the text denote, that the assent of another, as well as the assent of the giver, is required.

MISRA explains “property inherited from ancestors,” immoveable property which has not been divided. Consequently, the immoveable patrimony, received by brethren in right of their connexion or affinity as sons or the like, may not, so long as it remain undivided, be given by one son without the assent of the rest: the commentator does not consider gift as forbidden, when there

there are no brothers who are coparceners, and there are brothers and sons with whom partition has been made. If it be asked whence *the limitation of* "immoveable" is obtained, *the answer is*, from the text of VYÁSA (Chap. II, v. VI). If it be *again* asked whence *the limitation of* "undivided" is obtained, *the answer is*, from the text of NÁREDA (VI). Therefore MISRA does not say, that a father may not give *any thing* without the assent of his sons: as we shall hereafter show.

"Do not subsist" (XVIII 3) denotes the nonentity of every gift (*that is, some do, and some do not subsist*); such is MISRA's meaning. And in the subsequent text (XIX 4) it is declared, that if those three respectively (what is acquired by marriage, &c.) be given with the assent of the wife, of the co-heirs, or of the king respectively, the gift has validity: for it is a rule, that things named in order, should be referred respectively to the terms placed in similar order; as in the example, he cuts a *D'hava*, and a *C'hadira* tree, with a bill and an axe.

"Acquired by marriage;" what is received at nuptials on obtaining a bride. There the rule bears, that the assent of the wife is required when the property is given away by the husband, not when it is employed in procuring raiment or the like for consumption; since that would be a moral construction of law. Civil law is founded on reason, not on revelation *only*; for it may rest on another possible foundation: accordingly VRĪHASPATI directs that decisions shall be made according to the reason of the law (XVII). MISRA.

Here the expression "at nuptials," is employed comprehensively; for the rule bears, that even what is afterwards given, with a declaration, "this is bestowed on thee, that my daughter may be maintained with it," should not be given away by the husband without the assent of his wife. What is given with a declaration of its uses for the maintenance of the wife, becomes the property of the husband concurrently with her; therefore it is fit that the gift should be made with her consent. In other cases, his property is independent of her: what should prevent a gift without reference to her consent?

If it be said, the husband's gift is in no case proper without the assent of the wife, because the text, "property is common to the husband and wife," shows her title in the whole of his wealth,

wealth, and should not be otherwise explained without an objection *existing to its literal interpretation*: that is denied, because the wife's property must be inferior, as it is subordinate to the husband's; and the right of persons living under the control of others, cannot prevent the divesting of property appertaining to the persons under whom they live.

May not the wife's title subsist although the thing be given away, for her property is not divested? It should not be answered, the wife's property, being dependent on the husband's, should be considered as annulled when his title is transferred. Were it so, his right being divested by his death, and the property vested in the sons, their mother would not be entitled to a share, in right of her former property, when they afterwards make a partition. *To this it is replied*, that the difficulty is removed by saying, the mother's title to a share is not founded on her former property, but on positive texts; and if it be wished to interpret the text according to the reason of the law, the vesting and divesting of the property cannot be established without *the support of an express ordinance*: but, under the authority of the text, and by the force of the possessor's will to make a gift, the divesting of the husband's property is accompanied by a transfer of the wife's. However, the divesting of his property by death or degradation is excluded from this consideration. Thus must the law be interpreted.

According to the opinion of JÍMÚTAVÁHANA and others, (who contend that the wife is not entitled to the estate of her husband who leaves no male issue,) food and raiment must necessarily be given to her, although her husband's brothers succeed to the whole estate: that alone is her right; but she cannot claim partition with his brothers, for no ordinance *has authorized it*: and, since women are dependent on men, surely their property must be so likewise.

Since the husband's wealth is common to him and his wife, it is joint-property; and if it be given away by the husband, her share *nevertheless* subsists, as in the case of joint-property belonging to two brothers. This *again* is denied; *for, in practice*, that is considered as joint-property in which there is equal right on both sides. Hence, even those who contend for the equal dominion of a father and son over an estate inherited from the paternal

ternal grandfather, do not affirm that the son's share in it subsists if it be given away by the father alone, for he has not joint-ownership with the father. The term is derived from equality: but that estate does not equally belong to the father and son; for one is superior. The expression "equal dominion," is vague, intended to prevent the father acting *solely* at *his own* pleasure in the partition of the heritage: it is founded on connexion by birth, which common sense does not make equal; and it must be established that the son's claim in right of affinity is included in the father's. Admitting, with JÍMÚTAVÁHANA, dispersed property, *still* the son's right must be considered as the same with the father's, being referred to the same quarter. Hence, in a partition made by the father, no share is given to a grandson whose *own* father is living.

There is no dispute on the opinion of those who hold that the text which declares wealth common to the husband and wife, implies only the expenditure of his property in honouring guests, not a right vested in her. But it is irregular to interpret a text otherwise, without unfitness *in its literal sense*: and we hold it proper, that the wife's co-operation should be required in civil contracts, as in religious acts; under the text, "The wife is declared to be half the body of her husband, equally sharing the fruit of pure and impure acts" (Book V, v. CCCXCIX); and again, "Then only is a man perfect when he consists of *three persons united*, his wife, himself, and his son" (Book V, v. CCLII 4).

"For that would be a moral construction of law" (gloss of MISRA above quoted); the *Smṛiti*, which is founded on the reason of the law, relates to visible effects, grounded on authority, other than *moral* precepts, but deducible from reasoning: but, where the reason of the law does not appear, there, as the authority of it must of course be sought, effects are supposed which proceed from the *Vēda* alone, an authority independent of life; and such effects, in some instances pure, in others sinful, are unseen, or *metaphysical*. If this text imply immorality, a difficulty would arise from the additional necessity of establishing an unseen or *moral cause*, contrary to the immorality declared to arise from those ill actions, and independent of the declared effects of the moral cause mentioned. Such is the sense of

MISRA's remark. The unseen or moral consequences of irregular conduct are declared : by discriminating the degree of irregularity, crimes of several degrees result from one general expression ; penance must be performed accordingly, and punishment must be proportioned to penance : but, in this text, reasoning, not morality, is shown. Such is MISRA's meaning: to expatiate would be superfluous.

Should not scripture be established as the foundation of the system of law, declaring it to be founded on scripture ; but not independent of reason ? Reasoning is not obviously denoted by the text ; therefore he says, civil law is founded on reason : but rules concerning lunar days, and the like, are absolutely founded on scripture. How then is law called *Smṛiti* ? Sounds, which were heard from the utterance of the Supreme Being, are called *Śruti* ; they are the *Vēdas* ; and these names are interchangeable. Words which were delivered by holy Sages from recollection of the sense, after forgetting the words revealed by the Supreme Being, or even while remembering them, are called *Smṛiti*. If recollection of the sense of the *Vēdas* be not admitted as its foundation, how can it be called *Smṛiti* ? The answer is, reason is not the sole foundation of civil law, but scripture also in some instances ; accordingly a text of scripture concerning partition during the father's life-time, is adduced by the holy Sage BAUD'HAYANA. But MISRA has said, " it is founded on reason," because reasoning abounds. In the law concerning lunar days and the like, scripture abounds ; and reasoning is only sometimes employed. Again : property is a thing founded on scripture ; for, without it, the vesting and divesting of property could not be proved : hence, the conveyance and transfer of it being proved from the scripture generally, it has been established by Sages, from the reason of the law, that effects bailed cannot be given away ; that joint-property is unalienable without the assent of the other proprietors ; and that several property may be aliened at the sole pleasure of the owner, and so forth.

" For law may rest on another possible foundation " (gloss of MISRA above quoted) : since the words of holy Sages are words of living men, they have not authority of themselves. It is true in reasoning, that one alone has authority in the universe : HE, BY WHOSE WILL THE UNIVERSE IS GOVERNED. But it does not follow

follow that the words of Sages have no cogency, for they are void of deception and other faults. Hence the words of Sages, not cogent in themselves, nor yet destitute of authority, derive it from another *source*. It is not proper to affirm this source to be the Sage's eye, ear, or other organ of sense. Property and the like, which are things invisible, future, and remote, cannot be apprehended by the eye, ear, or other organ of sense. Nor should it be said, that Sages see every thing with the eye of absorbed contemplation; for it cannot be admitted that any other than GOD sees all things. It should therefore be affirmed, that the system of law has been propounded by legislators viewing the sense of the *Védas*; else, there can be no other radical authority for the words of Sages. A knowledge of the sense of the *Védas* being established as the foundation of the whole system of law, wherever a *particular* rule may be grounded on a sense deducible from the reason of the law, there another authority may exist; and it is not actually founded on the knowledge of the meaning of the *Védas*. This should be established as the implied sense of the term "rest on" or be caused: "a decision must not be made solely by having recourse to the letter of written codes" (XVIII); if it cannot be made in conformity both with the reason of the law and the letter of written codes, the decision should be made according to the reason of the law alone.

What is received from the maternal grandfather, must not be considered as having descended from ancestors, but as acquired by the man himself.

"Be given with the assent of the wife, &c." (XVIII 4). The gift should not be made without her consent. Is not that which must be given with the assent of the wife, and which has been previously described by the term "acquired by marriage," the exclusive property of the woman, and nowise appertaining to her husband? Therefore, the husband having no power to give it away, what purpose is there in her assent?

XXIX.

VYÁSA:—What shall be given *to a bride* at the time of her nuptials, with a declaration *of its use,*
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made by the giver to the bridegroom, shall be her entire property, and shall not be shared by her kindred.

Though it be the exclusive property of the woman, still the gift *made* with her assent is valid, for it is authorized by the owner; and this is implied by the expression “with the assent of the wife, of the coheirs, or of the king.” *To this it is answered*, were it so, it would be superfluous *to declare, that* what is acquired by marriage *may be given* with the assent of the wife; for, in all cases, a gift made with the assent of the owner is valid.

In the text of VYÁSA, bridegroom in the dative necessarily implies that he is the donee; that property is the bridegroom's, not the bride's: by declaring it her entire property, it is understood that she has an interest in it, which implies that a gift must be attended with her consent. This is denied; for another authentic text, quoted by JÍMÚTAVÁHANA, shows that the legal heirs of her exclusive property succeed thereto.

XXX.

VYÁSA:—What, *indeed*, shall be given *at any time* to the husband in trust for *his wife*, the daughter of the giver shall enure to her use, whether her lord live or die; and on her death, to the use of her issue.

Hence, JÍMÚTAVÁHANA makes it evident that it is the bride's property. It intends what is given to the bridegroom, with a declaration, “this shall be the bride's;” not *what is given* without this declaration. “At the time of her nuptials” is mentioned illustratively; it is not a *requisite* condition, since the declaration *of its use* is the cause of *its becoming female* property. Therefore such a gift belongs exclusively to the woman: but the construction of law, as delivered by MISRA, that “even what is received by an independent bridegroom, at the time of the nuptials, without such a declaration, may not be given without the
assent

assent of the wife," is incongruous. To this it is replied, what is given with a declaration "this shall be the bride's," is her exclusive property; but in that which is given to the bridegroom with a declaration "it is my intention that the bride's maintenance should be *secured* by this," the bridegroom has ownership, but with reference to the *consent of his wife*. This is intended by MISRA, and consequently there is no inconsistency.

But if a declaration be made *in these words*, "this shall be the bride's," her husband is not the donee, and he should not be named in the dative. It must not be argued that the dative case denotes the agent's object, as in the example "she sleeps with her husband." The object, *or intention*, "this shall be the bride's," has no relation to the bridegroom. SRÍCRISHNA-TERCÁLANCÁRA explains "what is given to the bridegroom," what is delivered into his hands. But others explain "declaration," a notification that "it shall be the bride's property:" consequently the gift is made to the bridegroom, but contemplates the property of the bride; and where the design of the gift is that the property shall be the husband's in trust for his wife, it becomes her property through the medium of his, and belongs exclusively to her by the authority of the text.

In fact, the gift of every sort of property acquired by marriage, must, under this text, be made with *a previous* reference to the wife; as the assent of the king *is required* for a gift of arms, horses, elephants, and the like, conquered in war: and it may be affirmed, that the rule is assumed from the reason of the law, grounded on the wife's interest *in the chattel*. The justness of one opinion, (MISRA's, or these,) should be thoroughly examined.

With the assent "of the coheirs" (XVIII 4); meaning undivided brethren and the rest. MISRA.

"Of the king" (XVIII 4). He in whose army a man combats is the *king or lord*: in giving wealth gained by valour, his assent is required. VÁCHESPATI MISRA notices a distinction: the king's consent is required for a gift of arms, horses, elephants, and the like, gained by valour or by victory in battle; for his ownership is supposed: but *it is not required* for a gift of clothes or the like; for they are supposed to devolve on the conqueror's men. Others hold, that, in regard to the surrender of his cities by the conquered king, and in regard to horses and the like seized by the enemy
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and given by the victorious prince, the concurrence of the conquered king is required. VÁCHESPATI MISRA does not accede to this last opinion; for he has not explained this contradiction.

“The gift has validity” (XVIII 4): but not without the assent of the wife, of the coheirs, or of the king.

“Heirs, *whether they be divided or undivided, &c.* ;” brethren and others of right receiving the heritage of him whose inheritance they take. MISRA states the import of the term “divided ;” although heirs have made a partition, their shares, if not separated, remain in common, and are consequently joint-property. In that case a single parcener has no power to give, pledge, or sell the whole. But if all the effects be separate, the act of a person who is his own master is valid. In effect this relates to cases where no partition *has been made*. It must be noticed, that since those *shares* appear virtually to be held in common, the sense of the text shows that joint-property may not be given. CHANDÉSWARA, from the derivation of the term (*dāyam ādattē*, takes the heritage), explains *dāyāda* or *heir*, a son or the like; (as the *Calpateru*, in a gloss on the text of ‘APASTAMBA, expresses “heir, son, or the like ;” and the author of the *Pracāsa* also explains the term in the singular number.) Consequently he concurs with MISRA : thus “heir” signifies “son ;” to the question “whose sons?” the answer is, “his from whom the estate has descended :” hence the brothers of the donee are virtually suggested by the terms of the text. Consequently all the sons of the original proprietor are equal owners : hence no one has power to give away the joint-property ; he has not the independent power requisite to the validity of his act. VÁCHESPATI MISRA states this opinion of CHANDÉSWARA in these words : “others hold “that the term heir chiefly intends son : while the father lives, “even a separated son has not power over the immoveable estate ; “but what he has acquired by the acceptance of gifts, and the “rest of the seven modes of acquisition, he may give away.” Consequently, while the father remains, sons, with whom no partition has been made, have not power over the immoveable estate ; and while he lives, they are not uncontrolled in receiving, aliening, and dissipating property. The texts have the same foundation : but in that text the dependence of undivided heirs,

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in regard even to moveable effects, is further denoted, and it shows that separated sons have not power over immoveable property.

Some expound the phrase "heirs or sons have a lien equally" (XVIII 5), they are owners equally with their father: accordingly it appears from the text of YÁJNYAWALCYA (XIII), that the father has not power to give away immoveable property without the assent of his sons; and that is actually declared by the legislator (XIV): and this text they hold to have the same import.

Concisely the settled rule is this: joint-property, which has descended from ancestors, can *only* be given away with the consent of the other parceners; divided moveables *may be aliened* at the owner's pleasure, but immoveables with the consent of those who were parceners before partition: in the case of wealth acquired by marriage, the assent of the wife is requisite; of other property, acquired by a man himself, a gift may be made at his own pleasure. Such is the opinion of CHANDÉSWARA, and also of VÁCHESPATI MISRA: but the assent of the wife is only required for what has been given to the bridegroom, with a declaration, "let this be the bride's," and not in every instance of property acquired by marriage: and there is this difference; *according to the last opinion*, the assent of the rest of the brethren is not required for a gift of divided immoveable property. In the former opinion there is *also* this difference: what has descended from ancestors must *only* be given with the assent of sons; and so must immoveable property acquired by a man himself.

CHANDÉSWARA has not clearly explained, that, if the ordinance be infringed, the gift is void. In the want of an able exposition on the words "the gift has validity" (XVIII 4), it is inferred that the gift is not valid *in other cases*. It is the opinion of VÁCHESPATI MISRA, that the gift is void; for, in a gloss on "divided or undivided" (XVIII 4), he states, "but, after partition, a gift made by an independent person is valid."

JIMÚTAVÁHANA says, "a gift made by the owner, not disqualified by insanity or the like, is in no case void; the gift is "valid to the amount of his own share even of landed property."

The wife's gift of property belonging to the husband to whom she is united, has not been considered by any modern author: the

the discussion of *this point* may be seen in Book V. On Inheritance.

The text, "at his pleasure he may give what himself acquired" (XVIII 3), is not restricted to property other than immoveables : but it applies to whatever *the owner* himself acquired, whether moveable or immoveable ; for there is no authority for any restriction. Such is CHANDÉSWARA'S opinion : but it may be objected, that a limitation might be deduced from the text cited by JÍMÚTAVÁHANA and others (XIV).

Declaring valid the gift of property acquired by a man himself, or inherited from his father (XVIII 2), the Sage declares the moral purity of gift, "at his pleasure he may give, &c." (XVIII 3). Consequently there is no reference to the assent of any person ; and a gift actually made is morally pure. But of property acquired by marriage, or inherited from ancestors and not divided, the whole ought not to be aliened. Such is the sense of the text (XIX 3). For, the bride having ownership in what is given with a declaration of her property, the bridegroom is not independent in regard to it : but, if it be given with a declaration only of its use for her maintenance, a gift of *such property* made by the husband is valid. For this purpose it is said, not every gift subsists, *or the whole ought not to be aliened* (XVIII 3). In regard to what has descended from an ancestor and is undivided, a gift of the whole made by one parcener is not valid ; but the gift of his own share is good in law. The Sage declares the form of validity in gifts (XVIII 4) : the whole property acquired by marriage, or inherited from an ancestor, given with the assent of the wife, or of all the coheirs, is a valid gift : since the king's favour concurs to the ownership of property acquired by valour, even a trifle given without his consent is not a valid gift ; for, without his consent, the occupier has no independence. Such is the sense of the text : and that is proper, because the king maintains the army for the sake of victory in war ; hence, what is conquered by the troops, of right belongs to the king, else the ownership of territory conquered by his forces would be shared. Or, what distinction is there in respect to clothes, horses and elephants, territory and the like ? As to what is gained by desperate valour, as well as by valour *generally* (Book V, v. CCCLX), even there it appears that the king's assent is requisite to enjoyment, to gift,

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and the like. But the king, any-how informed, gives immediate mental assent: instances of *formal* consent are not much seen in practice.

In regard to immoveable property inherited from an ancestor, the assent of brothers and the rest, who, though separated, may ultimately be entitled to a partition of it, is the cause of moral purity by the gift: but the donation is not void without their assent, for that is not denoted by the text. As to the inference, that the gift is void, because disability is denoted by the expression "has no power" (XVIII 5), it is inadmissible; for, the disability may be otherwise effected: thus, when an heir, though divided, forbids the gift or sale of immoveable property inherited from an ancestor, the occupier cannot give it in contempt of that prohibition. Such is the sense of the words "has no power;" and practice also conforms therewith.

A gift of immoveable property, made by a father without the assent of his sons, is valid: but he should be amerced, and must perform penance; for their equal dominion is propounded under the title of Inheritance.

XXXI.

YĀJNYAWALKYA:—Over land acquired by the grandfather, over a corrody *out of mines or the like settled on him and his heirs by the king*, and over slaves employed in his husbandry, the father and the son, *when the grandfather dies*, have equal dominion*.

And that is pertinent, as it relates to inheritance; else, sons could not have ownership while the father lives: but to affirm that the right is similar, would be *mere* childish prate. At present, the title becomes similar after partition, as is shown in Book V. On Inheritance; and the texts of VISHNU and others confirm it: but a gift by a father under the impulse of anger, or the like, is not valid. Such is the modern opinion: no one has expressly said, that the immoveable patrimony, given without the assent of sons and the rest, is not a valid gift. Even the king should

* Book V, v. XCII.

should not, in breach of the law, give immoveable property for civil purposes; but he may give land or the like for religious uses: so may any other owner give away his own property for such uses; it is not proper, in this instance, to discriminate moveable and immoveable property: the family, however, should not be distressed, as appears from a text cited by JÍMÚTAVÁHANA (XI).

From the rule, that 'evil is not the consequence of an act producing good, and consistent with the *Védas*, provided the act be different from incantations to destroy enemies and the like,' some infer, that sin is the consequence of a gift of property, when there was no excess above the *necessary* subsistence of the family, (*this being comprehended in that vague exception;*) hence the rule of decision in this instance is similar to that which regulates gifts for civil purposes: but those who are able speedily to acquire wealth, perform the *costly* sacrifice *Viśwajit**, or the like.

XXXII.

VÁJNYAWALCYA:—Let the acceptance be publick, especially of immoveable property: *and*, delivering what may be given and has been promised, let not a wise man resume the donation.

“Publick;” in the presence of witnesses; let him so act that he may not afterwards say, “this was not given by me, but intrusted for use.”

“Especially of immoveable property:” a gift of land, without the assent of sons and the rest, is not consonant to duty; therefore arbitrators may think it has the appearance of a *contract* not made: kinsmen, even though divided, may litigate; and absolute property is ascertained by possession for twice the period which confirms a *right to* moveable effects: these and many other obstacles exist in regard to land; it is therefore said, “especially the acceptance of immoveable property.”

A written contract of gift is proper; in the want of that, the donation should be attested. The contract should be written with the

* MENU, Chap. XI. v. LXXV.

the donor's own hand ; and, in these times, it should be witnessed : else a litigant, averring that it was obtained by compulsion, may render the writing vain. The witness should be a kinsman, a publick officer, or other principal person ; for an authentick text declares,

XXXIII.

Land is conveyed by six formalities, by the assent of townsmen, of kindred, of neighbours, and of heirs, and by the delivery of gold, and of water.

Literally “ of the town ;” meaning the rational inhabitants of the place. “ Kindred ;” persons who might eventually be entitled to the heritage after the giver's *male* issue, namely daughter's sons and the rest. “ The lord,” the king, or his substitute, or any king's officer employed for the purpose. “ Heirs,” sons and the rest. *Land is conveyed* with the assent of these ; that is, with their acknowledgement of knowing the gift, or with their attestation : but the author of the *Mitâcsharâ* says, the gift should be made after they have assented. By “ town,” according to him, is meant the king's officer residing in the town : his assent is required to ascertain the boundary ; else, the gift may be *either* void or immoral, (*according to the difference of opinion on that point,*) because it may include the joint property of others. By “ kindred,” *according to him*, are meant brothers and the rest : without their assent, a gift is defective, as already shown. By “ lord” is meant the king ; his assent is required, because subjects are dependent (XV 2) : in a gift of land, the assent of him by whose will it is held, and by whose favour the encroachments of others are prevented, is indeed proper. By “ heirs” are meant sons ; their assent is required by the text cited in the preceding section (XIV). “ A delivery of gold” with land, for the purpose of showing a complete gift, is proof of donation. “ Water” is delivered with *tila* and *cusa*, for the auspiciousness of the gift. And thus a donation of immoveable property for religious uses is excellent ; but, for civil purposes, a gift of immoveable property should not be made by prudent men : this is a settled rule.

By proceeding so far, great difficulty would arise in gifts of

landed property for civil purposes. But, when the townsmen and the rest are witnesses to the contract, there is no controversy. If, by accident, they be not witnesses, their assent should be noticed in the deed of gift, and the written contract should be made in the same form with a written contract of loan; for the directions of YAJNYAWALKYA are general (Book I, v. XVI).

The form of the writing should be this: in place of the creditor's name, let the donee's be written, and the names of his father and so forth, to prevent a mistake of the person; next should be written, "this deed of gift, *as follows*: for the sake of heaven I give unto thee, with gold and water, this land, measuring so much, and exceeding the *necessary* subsistence of my family, *to be held* for such a period." If the townsmen and the rest be not witnesses to the deed, or if they be not present, the instrument should express, "with the approbation of the king, and with the assent of sons," and so forth. Though the consent of sons be not required in a gift for religious purposes, it should nevertheless be noticed, (on account of the difficult publicity of a gift of immoveable property, which has been remarked by Sages,) that himself and his descendants may not claim ownership. The year, month, fortnight, and day should be noted; and the donor should subscribe his name with his own hand, first writing the designation of his father and so forth. The names of witnesses, informed of the whole contents, may be subscribed by another hand, after asking *their permission*; but the writer's name *must be added*. If any party be unable to write, *the instrument* should be subscribed by a substitute: but the donor, if unable to write, makes some mark, as a double line, or the like. Such is the practice.

A contract written by the party himself, even though not attested, is *good* evidence; but, if attested, it is indisputable: and therefore it is proper to make it *in that form*. But if there be not the attestation of kinsmen and the rest, then it must certainly be questioned by the king. Such should be the written contract of gift for the whole of joint-property: in grants by a king there is some difference.

XXXIV.

YAJNYAWALKYA:—Let a king, having given land
or

- or assigned a corrody, cause his gift to be written, for the information of good princes, who will succeed him,
2. Either on prepared silk, or on a plate of copper, sealed above with his own signet. Having described his ancestors and himself,
 3. The quantity of the gift, with the penalty of resumption, and set his own hand to it, and specified the time, let him render his donation firm.

“A corrody ;” the gift of a thing assigned on a fund. “For the information of good and just princes ;” not of unjust princes, for they indeed violate even written grants. How should the writing be framed ? He says, “on prepared silk,” or (because that is not durable) “on a plate of copper.” “The gift ;” the land or thing which is granted. *Having described the quantity of it ;* “its quantity so much.” Declaring the consequence of resuming a gift. Setting his own hand to it ; “what is here written has the assent of me, son of such a one :” with such words subscribed, and with the date affixed ; that is, the date of his reign, or the time of an eclipse of the moon, or the like. By the assent of the king, the donation should be rendered firm.

The consequence of resuming a gift is thus shown.

XXXV.

Adi purāna :—The giver of land remains in heaven sixty thousand years ; but he who resumes it, or assents *to the resumption*, shall so long inhabit a region of torment.

In the *Dīpacalīcā*, a corrody is thus explained : the gift of a future thing by a previous agreement, in this form, “I will give a hundred *suvernas* every month of *Cārticī*,” or, “out of this mine, or this village, I will annually give a hundred *suvernas*,” or, “I will monthly give one *suverna*.”

How can there be property in a future thing ; for it has not,

at that time, a place on which to rest ; and the act of volition ceases after creating the right. Neither is *it true, that* a future thing is not given, but only promised: were it so, after the death of that king, on the accession of his successor, the corrody would be lost. Nor should this be deemed admissible ; for it is inconsistent with *the practice of* respectable men. *To this it is replied,* that the past existence of volition is the cause of *this* property : hence the *Bráhma* has a right to the future thing ; and, should another king resume *the grant*, he falls to a region of torment for seizing holy property. The gift of a corrody is at once completed ; but it should be inserted in the written grant, “ I will give a hundred *suvernas* every *Cárticì*.”

If property is not created in a future thing, why is the partition of a corrody discussed ? The word itself justifies its futurity, and implies volition ; and the term “ gift ” is extended to corrody for the purpose of confirming it, like the sale or transfer of a debt. The grant of the pension should be prefaced with these words : “ this written grant of a corrody.”

“ For the information of good princes : ” else a prince, though good, might resume it through ignorance or doubt ; a bad prince would *probably* resume it knowingly. To denote this, the epithet good is added. This is meant generally. A consequence of the grant is the spreading of the donor’s fame : accordingly, an authentick text, cited by GÓYÍCHANDRA, expresses,

XXXVI.

So long as his fame, unforgotten, pervade the earth and air, shall the generous man remain in a celestial abode.

It is related in the *Mahábhárata*, that, having performed many virtuous acts, and enjoyed heaven during a very long period, the king INDRADYUMNA, falling *from heaven* when almost all his contemporaries were dead, though *the merits of* his virtuous deeds were yet unexhausted, asked of the Sage MARCANDÉYA the story of his fame : but he, though he had lived long, being unable to relate it, referred him to one born before himself ; that person also

unable

unable to relate the story, did the same: this series of reference being continued, a turtle in the lake of the DÁNĀVAS rehearsed the whole history of INDRADYUMNA. By this his fame, before extinguished, again blazed, and by its own effulgence caused the king INDRADYUMNA to ascend to heaven.

As prepared silk is not very durable, a plate of copper is directed. According to the thing to be given, a particular leaf or plate may be used. Copper is here mentioned for its purity and auspiciousness: this is meant generally, comprehending silver and the like.

“His own signet;” a thing used to stamp at once the whole of the letters in an uniform mode: the letters may be those which express his name, or others, but such as cannot be used by another person.

“His ancestors;” the race from which he sprung; his own ancestors born of that race: for the purpose of spreading their fame with his own, and to prevent the mistake of another person bearing the same appellation.

“Himself:” since it is customary to insert the name of the donee and the rest, and since his own appellation is actually inserted from the necessity of observing the form of a written contract of debt, or is inserted because it is engraved on the seal, something more must be *here* meant; and that appears to be his own titles of honour: though it be improper to exalt and celebrate himself, such praise is not improper from his own dependents. Thus some explain the texts: but others hold, that, since he is dignified by spiritual persons with titles of honour, it is proper to insert them.

“Describing the quantity” of land, in this form, “land measuring so many cubits.” In fact its description by time and place should be inserted: however, that is not shown in the text of YÁJNYAWALKYA (XXXIV), but is *inferred* from practice: it is usual to insert the *name of the town* and the like.

“The penalty of resumption:” the consequence of resuming what has been given, as has been mentioned; and another authentic text, cited in the *Dīpacalīcā*, denounces the penalty.

XXXVII.

But he who seizes the subsistence of priests, whether
given

given by himself or by another, is born a reptile in ordure for sixty thousand years.

It is shown by texts cited in the *Ecādeśi tatwa* (XXXVIII and XXXIX), that a man seizing holy property is guilty of a crime equal to the murder of a priest; and, seizing the property of a *Cshatriya* and the rest, he is guilty of a crime equal to the murder of a soldier and so forth.

XXXVIII.

Vāyu purāna :—Since property is called external life, he who takes it slays the owner.

XXXIX.

SANC'HA :—He who resumes the subsistence of any man, of what tribe soever, must perform the expiation prescribed for killing a person of that tribe.

XL.

HĀRĪTA :—He who gives not what he has promised, and he who takes back what he has given, sinks to various regions of torment, and springs again to birth from the womb of some brute animal.

These and many other consequences from resumption of gift have been propounded; for the sake of illustration, a little has been inserted in this place. Many fruits, accruing from the gift of land, have also been mentioned by Sages.

XLI.

But he who accepts land, and he who bestows it, performs

performs pure acts, and shall certainly go to a region of bliss.

And "the giver of the land obtains landed property*," and so forth; but that is not mentioned by YĀJNYAWALCYA.

As the direction for the king's subscribing the grant with his own hand may be fulfilled in any words, some explain it, that he should only write with his own hand, "so much land given to such a person." They think it ill reasoned *to require* the words "this deed of gift," as practised by his officers.

"The date;" "his own" is brought forward; consequently the sense is, the king should execute the deed of gift dated by the year described from the reigns of princes of the same dynasty. His titles, and the denunciation against the resumption of gift, *should* be placed above, and on the left side; for it is customary to put the name of the giver on the right side. Let him render his donation firm, that it may have long duration. Thus some explain the text (XXXIV).

A deed of gift, or the grant of a corrody, should be thus framed in the form directed for a written contract of debt; it is separately mentioned, for the additional direction of a seal and the like. This gloss is grounded on the *Dīpālicā*.

Since the priest, as well as the king, has property in the soil occupied by the subject, (for he is declared by MENU to have dominion over the human species, Chap. II, v. XXIV.) and since the priest's lordship of the soil is proved by the practice delivered in the system of law (Chap. II, v. XIII), and since MENU declares it (XLII), and since the priest is entitled to a share in the produce of agriculture (XLIII), how is it again bestowed on him?

XLII.

MENU:—The *Brāhmaṇa* eats but his own food, wears but his own apparel, and bestows but his own in alms: through the benevolence of the *Brāhmaṇa*, indeed, other mortals enjoy life.

M 4

XLIII.

* MENU, Chapter IV, V. 230.

XLIII.

PARÁSARA : — Giving a sixth part to the king, a twenty-first to deities, and a thirtieth to priests, a husbandman is exempt from all sins incident to agriculture.

To the question above stated it is answered, that dominion is expressed in a general sense ; as a priest is not qualified for war, he has not superior ownership : and even admitting the priest's lordship of the soil, a gift may be *nevertheless* made to him for the purpose of entitling him also to receive the share due as revenue to the king.

MENU forbids the levying of revenue from a field occupied by a priest ; for, otherwise, the text quoted in Chapter II (v. XIV 7) would be unmeaning. But subjects, even though residing on land appertaining to a priest, must be protected by the king ; and the fines imposed on them should be received by the sovereign.

If some river be described as the boundary, and the quantity of land be specified, then, should the river encroach on it, the loss falls on the priest, because his land is destroyed ; as it is his loss if gold received by him be stolen by robbers. But if the river assigned as the boundary should recede, the land gained by alluvion belongs to the king ; because the gift did not intend that land, and it exceeds the quantity *specified*. But where the quantity is not specified, and the grant expresses, “ the land as far as the river is thine ; what is carried away by the river is thy loss, what is left by the river is thy gain ; ” then the loss or the gain, *whichever it be*, is the priest's.

It must be considered, that if present volition, by its privation*, become the cause of future property in a future thing, present volition, by its privation, may also become the cause of future property in a present thing : as in the case of a gift, in this or other form, “ this field belonging to me shall be thine after my death,” the act of volition, which constitutes gift, is past at that very time. The increase of purity, *attainable by gift*, is gained on that day *which is hallowed by the donation* : but the property of the giver

* Alluding to the relation between cause and effects.

giver is not divested ; nor *is it* vested in the donee, until after the *giver's* demise. His donation is indisputable, because it does not differ from relinquishment, vesting property in another after divesting his own property. It should not be objected, that the past existence of volition is not seen to be a cause of property : it is necessary to establish it in the case of corrody ; and authors admit the gift of a future thing.

When a debtor pays the debt which he has contracted, by *assigning* something which will exist on a subsequent day, then, the debt being acquitted on that very day, interest ceases ; and that future thing becomes the property of the creditor, and cannot be taken by another. A debtor, desiring to conciliate the regard of his creditor, may voluntarily add, and give, a quarter, or half of that, and so forth, to a creditor eager for interest. In this case the form of the writing *must be regulated accordingly* : if YÁJNYA-DATTA, having borrowed ten *suvernas* from DEVADATTA, on the tenth day of *Āshāḍha*, discharge the sum on the eleventh day, with an *advance* of a quarter, the form of the writing is this : “ I, “ having received a loan from thee, on the tenth day of *Āshāḍha*, “ (to discharge that together with interest voluntarily stipulated, “ and amounting to a fourth part of the principal for a single day,) “ do give unto thee grain to the value of twelve *suvernas* and a “ half, at the *current* price of the month of *Pauṣa*, to be received “ from the produce of this field in the present year.” If the produce of several years be assigned, it should be thus stated, “ from the produce of this field for so many years.” But if the writing bear “ for the present year,” and grain be not produced that season, the amount should again be made a debt, for it is not in fact discharged : the will to transfer property has alone passed, but the creditor has obtained none : therefore the debt must be again paid. Where a debtor, intending to pay the debt when due, has carried the sum from his own house with the will that it should become the creditor's property, but in the mean time the money is lost by accident ; as in this case it must be paid again, so in the other case likewise : for there is equally a want of delivery ; and, according to VÁCHESPATI BHATTÁCHÁRYA, there is an equal want of property. The payment is complete on actual delivery ; not on a mental relinquishment only.

If he receive a loan from another, pledging to him the produce
of

of that field, then the last creditor shall have the surplus produce; he does not in this case take a share. If there be no surplus, the debt is similar to one unsecured by a pledge; and the last creditor shall be paid from other assets, for he has no pawn. But, if the prior contract were an hypothecation, then, according to RAGHUNANDANA, the first creditor must obtain his principal and interest by any other mode whatsoever, and relinquish the pledge: according to other opinions, the last creditor only shall take the produce; but the first creditor shall receive interest from the date of the second contract, at the rate of two in the hundred or the like, for his pledge was lost to him on that date. This and other points may be determined from a man's own judgment. CĀTYĀYANA declares, with a distinction, what has been said by YĀJNYAWALKYA, that what has been promised should be given (XVI).

XLIV.

CĀTYĀYANA: — He who delivers not a present which he has promised to a priest, shall be compelled to pay it as a debt, and incurs the first amercement.

By this expression, "as a debt," even beating and the like are permitted; but it is incompatible with common sense that the claimant should beat debtors of the sacerdotal class: it appears, therefore, that the king should employ *compulsory* means for the recovery of the debt. In fact he may compel payment by mild remonstrance and the like: it is mentioned to show the absolute necessity of payment. Prudent men do not make *absolute* promises; but, intending to give any thing, they say, "God willing, the purpose shall be accomplished."

From the mention of a priest in this text, some lawyers doubt whether it relate not to the promise of a gift for religious uses. But that is not right; for, in the case of a promise for civil purposes, the delivery of the gift is also necessary. It has been declared, that, in the case of a promise for such purposes, what has been promised is unalienable (IV 2).

XLV.

XLV.

Matsya purāna.—If a man give not what he has *legally* promised, let the king fine him one *suverna*, or *eighty rāśikas of gold*.

The contradiction between the fine of one *suverna* and the first amercement (XLV and XLIV), should be reconciled by distinguishing the case according to the virtuous or vicious disposition of the party.

YÁJNYAWALCYA has said, “let not a wise man resume the gift” (XXXII); there, resumption is of two kinds, refusing to deliver what has been given, and taking it back after delivery: the fine is the same, for they are *like* a pair of horses coupled in one yoke; and no other fine has been mentioned. HÁRĪTA declares the offence equal (XL and XLVI).

XLVI.

HÁRĪTA:—A promise *legally* made in words, but not performed in deed, is a debt of conscience both in this world and the next.

“Various regions of torment” (XL); the hells named *Raurava*, *Mahāraurava*, &c. What* is promised in words expressing “I will give,” but not actually given, is a debt (XLVI). How can it be a debt; for it is received from him by reason of a promise, *not by reason of a loan*? The legislator replies, it is a debt of conscience. From the words “in this world,” it appears that payment should be enforced by the king; from the expression “in the next world,” it appears that the promise-breaker sinks to a region of torment. Some infer, from the mention of debt, and from the exposition on a text cited in *Book V*, at v. CXI, (to those to whom payment has been promised by the father,) that what has been promised should be so paid by his son.

All

* MENU, Chapter IV, V, 88.

All this supposes a promise of what may be given ; but it does not apply to the promise of what is unalienable. Under the directions for an amercement where such property is given away, the king should not impose a fine, *at the same time* compelling the performance of an undue act ; nor should he omit to punish such an act. Therefore, half the amercement for giving what is unalienable is incurred by promising what should not be given ; or the king should compel the man to pay as much as he has promised, but has not delivered : two punishments existing for the same offence, the lightest should be preferred.

In some instances it is directed not to give what has been promised.

XLVII.

GÓTAMA :—A man shall not give, even what he has promised, to a person whom the law declares incapable of receiving.

His want of religious qualification is here the cause of his not being entitled to the gift.

Vivāda Retnācara and Vivāda Chintāmeni.

XLVIII.

MENU :—Should money or goods be given, *or promised as a gift*, by one man to another who asks it for some religious act, the gift shall be void if that act be not afterwards performed :

2. If the money be delivered, and the receiver, through pride or avarice, refuse *in that case* to return it, he shall be fined one *suverna* by the king, as a punishment for his theft.

Money or goods given, or promised, by one man to another who asks it for a sacrifice, should he not afterwards apply it to that purpose, shall be taken back if given, and shall not be delivered if promised *only*.

CULLÚCABHATTA.

If

If the donor give money to a priest for a sacrifice which he himself requires, and the priest, not performing that duty, apply it to his own use, at his own pleasure, then the money may be withdrawn: but it must not be resumed, if the man, asking it *in these words*, "I perform a sacrifice for myself, give me *this* money or *these* goods," and receiving the money or goods, do not perform the religious ceremony. Thus some interpret the law: but that is not satisfactory; for his asking it would not be the consideration. Therefore, the construction is this: 'to another, who asks it for some religious act;' that is, to a person who asks it, *at the same time* saying, "I will perform an act of religion."

According to CULLÚCABHATTA, the sense of GÓTAMA's text is, "what he has promised to a person not qualified on religious grounds;" according to the *Retnácara*, it is, "promised to a person disqualified on religious grounds." Both should be admitted; for a person not qualified, *or disqualified* on religious grounds, is incapable of a gift for religious purposes, since texts declare "marble transports not marble *over the deep*;" and again, "*wealth should not be distributed among women, nor among ignorant or dishonest men*:" and this must be understood of cases where religious qualifications were supposed at the time of the promise, as will be mentioned (LXII 3). But if wages, or the like, be the motives of the gift, the donor must deliver it even to a man not qualified on religious grounds.

The circumstance of his not applying what has been promised, to the religious use *intended*, may be known by *publick* report; for instance, some person declares, "this man, taking money or goods on this account, gives it to a harlot." If the receiver do not *in that case* surrender what has been given, or if he forcibly take what has been promised, he shall be fined one *suverna* by the king, and shall certainly be compelled to restore the thing. "As a punishment for his theft;" since it is thus declared that he shall be punished as a thief, *it does not appear* that he should be made to restore it by mild remonstrance and the like.

ART. II.—*On Valid or Irrevocable Gifts.*

XLIX.

VRĪHASPATI:—Things once delivered on the following eight accounts cannot be resumed, as wages, for *the pleasure of hearing poets or musicians and the like*, as the price of goods sold, as a nuptial gift to a bride or her family, as an acknowledgment to a benefactor, as a present to a worthy man, from natural affection, or from friendship.

“As wages;” as a recompense paid for work performed: so CHANDÉSWARA, with whom MISRA concurs. Sacrificial fees might, according to this exposition, be deemed wages; but the grounds on which they are not considered as such in forensick affairs, may be learned under the title of Non-payment of Wages or Hire.

“For pleasure;” for *the gratification of seeing dancers and the like.* MISRA and CHANDÉSWARA.

“As the price of goods,” paid to the vender. “As a nuptial gift or gratuity,” delivered to the person who gives the bride; so explained by MISRA and CHANDÉSWARA: a nuptial gratuity is paid at an *Asura* marriage*; and the pair of kine delivered at an *Arsha* marriage, though not *strictly* a gratuity, is comprehended in this term. “As an acknowledgment to a benefactor;” in return for benefits received: for instance, a man not receiving wages, but, from a motive of friendship, by his strength or abilities has accomplished some business for any person; what this person gives him, *is an acknowledgment to a benefactor.*

“As a present by a worthy man,” versed in the sense of the scriptures, given by him for religious purposes to a *Bráhmāna*. So MISRA and CHANDÉSWARA. It is mentioned incidentally, lest gifts for religious purposes should be reckoned in the number of

* See translation of MĒNU, Chap. III, V. 31.

of revocable gifts: but NÁREDA does not specify a present by, or to, a worthy man. His text will be cited (L).

“From affection,” towards sons and the rest; or from kindness to a friend. MISRA.

Or “worthy,” may be interpreted the state of worthiness; what is given to a stranger endued therewith, though no benefit should have been received from him, *is a present to a worthy man.*

“Affection;” kindness, friendship, and so forth; what is on that account given to a friend: *and the last term of the text may be interpreted tender regard, instead of friendship;* what is on that account given to sons and the rest. These three terms are also familiar in rhetorick, as names for love.

L.

NÁREDA:—They who know the law of gifts, declare, that things once delivered as the price of goods sold, as wages, for *the pleasure of hearing poets, musicians or the like*, from natural affection, as an acknowledgment to a benefactor, as a nuptial gift to a bride *or her family*, and through regard, cannot be resumed.

By this is declared the seven-fold distinction of valid or irrevocable gifts: it has been already said, that such gifts are of seven sorts (II 3).

“From natural affection, and through regard:” in these, worthiness may be comprehended; therefore the eighth distinction, noticed by VRĪHASPATI, is not excluded: or, a present to a worthy man may intend a gift for religious purposes, not mentioned by NÁREDA, because he had premised civil donations.

“In civil affairs, the law of gift is four-fold” (II 2). It should not be objected, that presents for religious purposes are *subject to civil cognizance*; else how could the king compel delivery? The gift alone is religious; delivery is *a matter of civil cognizance*. Then *the law concerning* what may not be given and the like, should be admitted in the case of gifts for religious purposes? In some instances it may be admitted; in some it may

be inconsistent with reasoning ; in some it may contradict *express* laws.

MISRA, considering kindness as influencing every gift, reduces the distinctions to seven. But CHANDÉSWARA explains “ a gift from natural affection ” (XLIX), a donation to sons or the like ; “ through regard,” for religious purposes : and this, he adds, is intended by VRĪHASPATI in the expression, ‘ a present by a worthy man : not distinguishing regard and kindness from pleasure, NÁREDA declares seven sorts ; and VRĪHASPATI, distinguishing them, propounds eight sorts : thus there is no inconsistency : or they may be reconciled, by saying it is not implied that one *text* curtails the other.’ His meaning is, that, since NÁREDA mentions natural affection in addition to regard and kindness, the number of seven *sorts* is complete : but as this might seem unsatisfactory, disparaging VRĪHASPATI, who has not specified natural affection *by the same term*, he subjoins another *mode of reconciling the texts*, “ it is not implied, &c.” that is, NÁREDA’s mentioning seven sorts does not imply an exclusion of others ; and VRĪHASPATI’s distinctions *are comprehended* in the seven sorts of irrevocable gifts. An ample exposition of these opinions would be a mere display of skill ; it is not of much use to the thorough examination of the subject.

A nuptial gift or gratuity is a general term, and may comprehend what is now given to a bridegroom on his marriage to the daughter of a *Rā’d’biya Bráhmaṇa**. Even a nuptial gift of money, received from the kinsmen of a bridegroom, in honour of ancestors, is taken by the parent, who maintains the boy : such is the custom. But land and the like, received for the maintenance of the bride, is not taken *by her father-in-law* ; nor property given at the bridal procession. Wealth also, received on a second marriage, is not taken by the bridegroom’s father ; for a second marriage is contracted for the purpose of obtaining that wealth. Nor is property which is received after marriage, from the wife’s parents *and kindred, taken by the husband’s father*. Such is the established usage.

Be it as it may be, according to CHANDÉSWARA’s opinion ; but, on the other opinion, how are gifts to near neighbours, revenue

* The families of priests settled on the western bank of the *Bhāgirat’bi* river are called, from the name of the country, *Rā’d’biya*, (pronounced *Rāriya*).

venue paid to the king, and a present to a wife on the second marriage of her lord, comprehended in the text? To near neighbours presents are made from friendship, or as an acknowledgment to benefactors; for, in this instance, the return of an obligation may be supposed as a motive. Revenue is paid to the king as wages, or as the price of the produce of land, because he has an interest in the soil. What is given to a wife on the second marriage of her lord, appears to be given for pleasure (Book V, v. LXXXVII); for the former wife's consent to her husband's espousal of another affords him pleasure. This and other cases may be understood according to circumstances: in all instances, pleasure, and gratification, may be supposed to influence the gift.

The mention of these irrevocable gifts is intended to show the motive of donation. In these gifts it should be distinguished whether the property might, or might not, be given away: but pleasure, as a motive of donation, must be understood with an exception to lust and the like. *On this*, more will be said under the title of Void Gifts.

LI.

DACSHA:—Presents given to a mother, a father, a spiritual teacher, a friend, a moral man, a benefactor, an indigent or unprotected person, and a learned man, are productive of benefit.

Here it is not meant that they are productive of moral benefit alone, but of other advantage also. Does not some benefit exist in every case; why is it said that presents given to a mother and the rest are productive? They are productive of the highest benefit. If gifts be made to a mother or a father, prosperity in this world, and increase of religious merit, arise from their satisfaction. By gifts to a friend, the highest degree of friendship is obtained. By presents to a moral man deserving of them, the highest fame is obtained. A present to dancers is attended with fame, but gains only a middle degree of reputation; and therefore is not mentioned in this place. A gift to a benefactor prevents the charge of ingratitude. Donations to the indigent and unprotected, from tenderness, or from regard to duty, produce religious merit.

merit. Sometimes even what is given without any consideration of duty, on account of the respectable qualities of a deserving person, produces religious merit.

LII.

CÁTYÁYANA:—What is received for relieving a man from apprehension of danger, or saving him from actual peril, or for promoting a matter in which he was interested, is an acknowledgment to a benefactor.

2. Where a reward, offered for the recovery of property missing, is received for discovering it, the gift is considered as *a payment of wages*.
3. But if *the reward be* thus offered, “I will give all my property to him who saves me from this danger, to which my life is exposed,” it shall not be so given.

After relieving any man sinking under apprehensions from the king or the like, what is received from him is an acknowledgment to a benefactor: so what is received for preserving him from danger. A tiger lies in wait to seize some traveller, who perceives not the animal; but another man, coming from a distance, slays the tiger with a weapon, or, boldly taking this man in his arms, carries him far *from danger*: what the traveller, thus saved, gives to his preserver, is given as an acknowledgment to a benefactor. So is a present made for accomplishing some business: for instance, some person has in hand the marriage of his son; and any man coming of his own accord, even though not induced by familiar intimacy, accomplishes the object; what that person gives to him after the attainment of his object, in consideration of the favour received, is an acknowledgment to a benefactor; and so in many other cases.

When a person finds not some chattel required for a particular purpose, and, greatly distressed thereat, says, “whoever shows me

me this chattel, I will give him so much :” after a reward has been thus offered, some person coming points out the thing ; is the reward then given an acknowledgment to a benefactor, or not ? The legislator replies, it is not an acknowledgment to a benefactor, but “wages” (LII 2).

A reward for the recovery of property missing, is there mentioned generally : *if any man* whosoever act with a view to a reward, what is given to him is considered as his wages ; but, where a man acts spontaneously, or from habits of intimacy, what is given to him is an acknowledgment to a benefactor. Yet, even in the case of wages, should an excessive amount be promised by a man in extreme distress, it shall not be delivered (LII 3). Danger of life is mentioned, to denote extreme distress ; in fact, should a man, during a conflagration, or during the sickness of his son, or the like, promise all his wealth, or one or two *lacshas*, to the person who shall save him, that promise is not valid. But it is reasonable that the gift should be great in proportion to the benefit conferred ; if ten, fifteen, or twenty *pieces of money*, or the like, be promised, according to the circumstances of the case, the same should be paid. It must also be considered, that, the resumption of an excessive gift being shown where it has been promised but not delivered, the donor has an equal right to recover it, even though it have been actually delivered.

If an umpire determine a controversy between litigant parties according to law, and the party who gains or who loses the cause give him any gratuity, it is an acknowledgment to a benefactor : the gaining of the cause is an advantage to the one, and the solution of doubts is a benefit to the other party. But if the fee have been previously promised by any person, it falls under the description of wages. Yet, if any litigant party, being distressed, should in any instance promise, or actually give, an excessive fee to an umpire, the excess above the sixth part of the value in dispute may be resumed ; deducting a sixth part *of that value* from the amount promised *or paid*, he may recover the remainder even through the intervention of the king. This is intimated by JÍMÚTAVÁHANA, in the *Dáyabhāga*, or *treatise on Inheritance* : and RAGHUNANDANA, explaining the text of CÁTYÁYANA respecting wealth acquired by science, “ what has been received as a gift from a pupil, as a gratuity for the performance of a sacrifice,

fee, as a fee for answering a question in casuistry, or for ascertaining a doubtful point of law," mentions the sixth part or the like which is received for well ascertaining *the point referred by* litigant parties, who apply for an explanation of the law.

If there be several arbitrators, they all receive and share one sixth part : for that must be intended ; else, if there be six arbitrators, the whole property would be lost *to the owner*. Since it is mentioned as received for well ascertaining the point *of law*, it follows, that if the arbitrator, receiving the fee, do not well ascertain the *doubtful* point, he shall be amerced by the king, and the fee shall be restored to the giver. Such is the reason of the law, conformable with express ordinances. But it is customary sometimes to give a considerable reward to a *Bráhmāna* acting as arbitrator, and *usually* living on alms, when he resolves a doubt with great labour, or transcendent knowledge of law, or for showing the legal form of penance and expiation ; since it is ordained, in the rules of penance, that a present shall be made to a venerable person : and in that case a gift is necessary.

If any liberal prince or wealthy man, solicitous of gaining his cause in a matter of small value, voluntarily give a great fee ; the king, informed of the circumstances, should not fine the arbitrator. It is wealth acquired by science, and is given for pleasure ; and it may be said to have been propounded by DACSHA, " to an indigent or unprotected person, or to a learned man " (LI).

The gift of a milch cow and a bull, by a person applying for instructions on the forms of penance, is declared necessary by the text ; " let the sinner proclaim his sin, giving a milch cow, and also a bull : " that *gift* is considered as wages. A gratuity which is paid to a priest officiating at a sacrifice, or to a spiritual preceptor, is also considered as a recompense ; and whatever is given to any *Bráhmāna*, for the completion of a man's own business, is granted for religious purposes. But in regard to holy property, as the giver's right is divested after consecration, it must then be merely delivered to priests. This and other rules may be established from a man's own judgment.

ART. III.—*On Void Gifts.*

LIII.

NÁREDA :—What has been given by men agitated with fear, anger, lust, grief, or *the pain of* an incurable disease ; or as a bribe, or in jest, or by mistake, or through any fraudulent practice, must be considered as ungiven ;

2. So must any thing given by a minor, an idiot, a *slave or other* person not his own master, a diseased man, one insane or intoxicated, or in consideration of work unperformed.

“ Fear,” of him to whom it is given. The *Retnâcara*.

“ A bribe ” (*utcôcha*) shall be subsequently explained *. “ In jest ;” by words expressing donation, but without the intention of giving. “ By mistake ;” delivering to one what was to be given to another, or delivering one thing instead of another which was to be given : so CHANDÉSWARA, VÁCHESPATI, and BHAVADÉVA.

“ Through any fraudulent practice ;” inadvertently, and the like : so VÁCHESPATI, BHAVADÉVA, and the author of the *Pracâsa*. But CHANDÉSWARA explains it, proposing much and giving little.

“ A minor ;” one who, from nonage, is unable to decide what should or should not be done. “ An idiot ;” naturally incapable of distinguishing right from wrong. So CHANDÉSWARA. “ Minor ” is explained by BHAVADÉVA and VÁCHESPATI, one who discriminates not what is or is not done. Fool they explain “ idiot.”

“ A person not his own master ;” a son, slave, or the like. “ Intoxicated ;” drunk with wine or the like. “ Outcast ;” banished †.—CHANDÉSWARA, VÁCHESPATI, and BHAVADÉVA.

N 3

“ In

* LIX.

† Some copies of NÁREDA read *outcast* ; [another reading is followed in the translation.

“ In consideration of work unperformed ;” deluded by the false promises of the receiver : so CHANDÉSWARA. But BHAVADÉVA and VÁCHESPATI explain it, a gift for a consideration, which is null.

“ A diseased man ;” afflicted with any malady. “ Agitated by pain ;” afflicted with an incurable distemper.

The *Mitâcsharâ*.

The author of the *Mitâcsharâ* and others do not approve the reading which omits “ a diseased man.” * The text is cited, with the other reading, in the *Câmadhênu*, *Mitâcsharâ*, *Vivâda-Chintâmeni*, *Dwaita-nirnaya*, and other works.

In the *Câmadhênu* and the rest, the reading is *apavarjitam* given, (instead of *apavarjitaih*, by outcasts from their tribe ;) explained by HELÁYUDHA and the author of the *Mitâcsharâ*, “ what is given by a minor and the rest, must be considered as ungiven.” They suppose the validity of a gift made by an outcast ; yet both opinions may be held to coincide : thus, according to HELÁYUDHA and others, it should be said, that a man banished from the family for the murder of the king, or other heinous crime perpetrated by him, has no right to give away property belonging to that family, because he is not his own master. The reading, quoted by CHANDÉSWARA, is *apavarjitaih*, or by outcasts, which he explains, banished from their tribe : but CHANDÉSWARA and the rest do not controvert the validity of a gift, when a banished man gives what he himself has acquired after his expulsion.

Men agitated with fear, anger, lust, grief, or pain, are five whose minds are disturbed from their natural state ; as is remarked by VACHESPATI-MISRA, CHANDÉSWARA, VÁCHESPATI-BHATTÁCHÁRYA, and BHAVADÉVA.

This is declared by the same legislator, who thus describes a person not his own master :

LIV.

NÁREDA :—Though generally his own master, what a man does while disturbed from his natural state
of

† *Bála mû'd'hâ'swatantrâs cha*, instead of *Bála mû'd'hâ'swatantrâ'rtâ*.

of mind, the wife have declared not done, because he is not *then* his own master.

Some infer this meaning: "where the volition of an owner, discriminating what may and may not be done, and guided solely by his own will, declares, as is actually intended by him, his own property divested, and dominion vested in a person capable of receiving, and actually intended by the donor, over the thing really intended to be given; that volition vests property in the donee."

In cases of fear and compulsion, the man is not guided solely by his own will, but solely by the will of another. In the case of a man agitated by anger or the like, he is not a person who discriminates what may and may not be done. If, terrified by another, he give his whole estate to any person for relieving him from apprehensions, his mind is not in its natural state: but, after recovering tranquillity, if he give any thing in the form of a recompense, the donation is valid. What is given as a bribe, or in jest, is a mere delivery, or a gift in words only: there is no volition vesting property in another. As for what is given by mistake, as gold instead of silver which should have been given, or any thing delivered to a *Sûdra* instead of a *Brâhmana* to whom it should have been given, the gold and the *Sûdra* are not *the thing and the person* really intended, namely silver and a *Brâhmana*. Though it be ascertained that ten *suvernas* should be paid, if any-how through inattention or the like, fifteen *suvernas* be delivered, the gift is not valid; for they are not what was really intended to be given: or the donation is in this case void; because the giver did not discriminate what should or should not be done. Where much is proposed and little given, (as where a man proposes to give much for what may be effected at little cost, and, after the work is accomplished, pays the simple due;) there, since the excess was only promised, or delivered, for the purpose of deluding, the will to vest property *in another* is wanting, and the gift is therefore void, as in the case of a bribe: but with this distinction, that in the case of a bribe the whole gift is utterly null, and here it is void in part.

This will be *best* understood after an explanation of *bribe*. According to the opinion of MISRA, such a fraudulent practice is comprehended in this description, for *ch'hala* or fraud is synony-

mous with *upadhi*, since what is denoted by the word "*ch'hala*," or deceit, as employed by MENU, VRIHASPATI expresses by the word "*upadhi*" (Book I, v. CCXXXVIII); and CHANDÉSWARA quotes that and subsequent texts, premising these words, "VRIHASPATI on the subject of *legal* deceit (*ch'hala*) lawful confinement, and violent compulsion." *Upadhi*, in general, is any improper act: consequently, in every case of improper gift, where a donation is falsely promised, there is fraudulent practice. CHANDÉSWARA subjoins "and the like:" where a man intrusts his own property to another for the purpose of deceiving his creditor or the like, saying, "it is given to him," the gift is void; and this should be included under the term "and the like." Other cases may be determined in this manner by intelligent consideration.

Here the gift is void, because the will of vesting property is wanting; and the want of such will is inferred from the improbability of such a gift being intended, from *the character* of the person, or from the necessity which then existed of deceiving him, or from the intention of the parties: this and other points should be determined by the wise. It must however be noticed, that, if a man engage a *Bráhmāna* in mechanical arts or the like, by proposing great wages, it is fit he should receive a large recompense; because he is induced, by the desire of wealth, to deviate from his regular duty: but he should not receive excessive wages. Other cases should be determined in the same mode.

The text of CĀTYĀYANA (LII 3) must be brought under this head, according to the opinion of CHANDÉSWARA: but, MISRA and others explaining "through any fraudulent practice" inadvertently, it may be brought under the head of mistake; for there exists a mistake of what should not, for what should be given.

If the monthly wages of a hired servant be one *mudrā* or coin; and he has performed work at one period for ten months, at another for one month, at another again for eleven months; and afterwards, when it is proposed to pay the whole wages, some person skilled in accounts has noted the ciphers on the ground in a vertical line, for the purpose of computing the sum; but, through some error in notation, mistaking the cipher of one for ten, computes accordingly; and thinking that thirty-one *mudrās* are

are payable, says so to the servant's master, and the master pays that sum to the servant: afterwards, some other person skilled in accounts detects the error: is not the gift *or payment* invalid? for it is given through deceit, according to the opinion of MISRA: deceit signifies misleading; and here he is actually misled by the words of another. But, according to CHANDÉSWARA, it must be *considered as given* through a mistake respecting what should be given. How then can the opinion stated apply in this instance, for the thing and the person were really intended; the owner was able to discriminate what should or should not be done; he was governed by his own will, and he willed to transfer the property in those thirty-one *mudrás*? The answer is, although the person were really intended, the giver was not aware that he was a proper donee as far as twenty-one or twenty-two *mudrás* only, and that thirty-one *mudrás* should not have been given.

In a similar case, if the hired servant reside at a distance, and the master die after sending thirty-one *mudrás* by a messenger; when the excess of nine *mudrás* above his due becomes known, if the messenger and servant *both* wish to take it, and the king neglect *to claim* the money, who shall obtain it? It should not be argued, that, because the whole money is delivered to the servant, he is entitled to take it; but the messenger can have no pretensions to it. The servant, having no acknowledged property in the surplus, cannot take it, since it is a deposit for delivery in the hands of an intermediate person; and if the messenger, computing the sum by mistake, caused the excess to be paid, then it is gained by his act. These lawyers answer, it may be so.

But others hold, that the act respecting the nine *mudrás*, which exceed his due, partakes not of the nature of theft; because, the owner not existing at the time of the receipt, they are not strange property. Nor is it a payment of *wages or hire*, for it was not regular to give so much. Therefore this is a semblance of gift; and whomsoever that intends, in him it vests *seeming* property. Afterwards, when it is proved by a plaintiff to be only the semblance of a gift, that title is divested, like the property in stolen goods. This should be established, as shown by the practice of the best men. It is not seen among good customs, that the king, on failure of heirs, should, after the death of the giver, take property

perty given to an improper person ; or that any person whosoever may take it, if it be neglected by the king. Seizing it forcibly, he does not obtain what is thus acquired by robbery. To this opinion the best authors assent ; and their assent is consistent with common sense. If it be asked, what proof is there of relative property ? the answer is, that right is vested by inconsiderate volition.

But that is barred by the ordinance, “ what has been given by “ mistake, or through any fraudulent practice, must be considered “ as ungiven ” (LIII 1). It should not be argued, that the ordinance only shows the subsequent revival of the donor’s title ; for it is difficult to establish the suppression of relative property intermediately vested. This is denied ; for it is, on the other hand, difficult to annex absence of mistake, or the like, as a requisite condition of vesting property by the will of the donor.

If the difficulty of proving the revival of the donor’s title, and the suppression of relative property, be retorted, the answer is, in a case where it is doubted whether there be or be not difficulties arising from very minute and logical distinctions, (as in the case of semblance of property,) the suppression and revival of the donor’s title should be admitted, in conformity with reason. In the case of robbery, this difficulty is raised by the Sages themselves : but if the law, as propounded by them, must in that case prevail, even then, since civil ordinances are grounded on reasoning, such a construction should in this case be set forth : and it is indeed proper ; for a rule expresses, that “ a principle of law, established in one instance, should be extended to other *similar* cases, provided there be no impediment.” The suppression of a property intermediately vested may be established in this instance ; for it would be contrary to reason that a robber should have property in what he has seized against the will of another, and that *a donee should have* none in what has been given by the owner. If the messenger knowingly deceive *the principal*, for the purpose of acquiring the property himself, it is a theft on his part : to affirm that the thing becomes his, would be improper ; for, if any criminal, liable to be punished by the king, apply to a principal officer of the realm to save him from that punishment, and be told, “ I will save thee by giving a hundred *mudrás* to the king’s minister ;” and that officer, taking the money, save the criminal, influencing

influencing the king's minister by verbal persuasion ; when the circumstance becomes known, the criminal, from his want of power, cannot recover the money ; but the king's minister, (alleging, " this was given for me, why do you take it ? ") may reasonably exact it from that officer. Here the reason of the law, as above mentioned, is pertinent.

" Minor " (LIII 2) is a *term* employed indefinitely, and comprehends a decrepit old man. This CHANDESWARA, MISRA, and others, expressly declare. " Idiot " is explained by CHANDESWARA, naturally destitute of power to discriminate what may and may not be done. By inserting " naturally," the word minor would not by any means be rendered unmeaning. Of what use is that insertion *in explaining idiot* ? " Minor " should not therefore be limited to age ; and " idiot " should be otherwise explained. According to its etymology from the verb *muh* be stupid or want sense, *mūd'ha* signifies stupid or foolish ; and thence may signify unknowing : consequently, where a man gives any thing ignorantly, the gift is void. For instance, a *Brāhmana*, supposing that kine may not be attended by a man of the sacerdotal class, because it is the duty of a *Vaisya*, has given away his cow to some person ; afterwards, discovering that a *Brāhmana* may attend kine, (for no law forbids it,) the donor says, " I gave you the cow through ignorance, therefore restore her ; " in that case the gift is void, and *the cow* must be restored.

If it be said, the gift is not void ; then the person who retains all that is *given* by mistake would be innocent ; for there is a contract of donation ; what difference is there between a thing given through mistake respecting himself, and through mistake respecting the gift ? As a payment of fifteen *suvernas*, where ten *suvernas* should be paid, is void, so the gift is utterly null where the whole ought not to have been given. Thus some expound the law. But that is wrong ; for it would fall under the description of things given inadvertently or by mistake. In fact it is not expressly said by any author, that, in such a case, the gift is void : and we do not admit *the inference* ; for it is irregular to assert, in a doubtful case, that the act done is null.

In the case of an erroneous payment of wages, *the excess* must necessarily be resumable ; for, in the payment of wages, absolute
gift

gift is not contemplated. It should not be objected, that, in the case *stated*, the donation is void, because there is no such duty as is the declared motive of relinquishment; namely, not to attend kine. Without intending *such* dereliction, the gift may be valid, because there is the intention of making a gift transferring property to another, and a benefit to him is designed: consequently, where a thing is relinquished on a mistaken motive for dereliction, it may be resumed; where it is given on a mistaken motive for relinquishment, it cannot be withdrawn; but where it is given on a mistaken motive for donation, it may be retracted. This rule coincides with our opinion.

Where a king, from the mistaken supposition that the partition of a kingdom is forbidden, gives his dominions to one son, it is not fit that the gift be resumed, on proof brought by the other sons, from law or custom, that partition of kingdoms is not forbidden; for his motives in making the donation are to confirm the kingdom to his son, and avoid partition; and his motive for avoiding that is the supposition that a kingdom is indivisible. Though he do not mistake, *it does follow that* partition may not be omitted; for the *kingdom* is *thereby* perpetuated: to set aside a gift already made, it must be proved that all had ownership, *but in this case* the rest had no prior title to *claim* partition; *the possessor* himself may legally omit it; and the avoiding of it, which is the motive of the gift, preserves the kingdom to the son: and the donation is not void, where the motive is *founded in fact*. It should not be objected, that, by removing the grounds for avoiding partition, and by thus showing its legality, the motive of the gift, *which was made* to avoid it, is rendered null, and the donation is *therefore* void. Although the thought that partition has been forbidden, which is the motive for avoiding it, be erroneous, still the division of certain property dependent on another person is not legal without the will to divide it and the act of making a distribution; and the motive of the gift *made* to avoid partition cannot be evaded. But in the case of the semblance of gift, since the act originates in error, that act of volition is unheeded: the property of the donee is divested without consideration of persons. After much discussion, the question may be determined by the wife.

Others interpret "idiot" one whose mind is alienated through the

the influence of witches or the like, or who is deprived of sense through the influence of a particular act (*namely sorcery*).

“A person not his own master;” a son, slave, or the like: so VÁCHESPATI-MISRA, CHANDÉSWARA, BHAVADÉVA and VÁCHESPATI-BHATTACHÁRYA.

Here some remark that MISRA and the rest have not explained the term as denoting one who is not owner, but have explained it “son, slave, or the like;” by which it is denoted, that their meaning is this: a gift made by a person technically denominated not his own master, is void. Persons so denominated are described by NÁREDA, as cited by VÁCHESPATI-BHATTACHÁRYA (XV). If there be an unseparated brother, senior by age and virtue, and occupied in maintaining the whole family, a younger brother has no power to give or sell either share of the whole joint estate; therefore the gift or sale is void: but, a contract made by such an elder brother is valid for both shares.

LV.

VYÁSA:—But, at a time of distress, for the support of his household, and particularly for the performance of religious duties, even a single coparcener may give, mortgage, or sell the immoveable estate.

However, the younger brother has power over his own acquired property; his want of power will *hereafter* be limited to particular sorts of property: and here it must be so established from the reason of the law. But, if the brother be senior by age alone, his gift of the joint estate is good for his own share only.

“All subjects are dependent” (XV 2): land or the like given by subjects, with the king’s consent, is a valid gift; so, if a corrody be granted by a wealthy man, the gift of it, with his assent, is *valid*.

“A pupil is declared dependent” (XV 2): the pupil is subject to control, because the teacher shares the fruit of his *actions*, (Book III, Chap. I, V. 13 & 17;) and what a pupil, who is maintained by his teacher, gives to another without the assent of

of his instructor is not legal; for he is dependent in regard to all acts generally. It is meant, that even a trifling gift is void.

Women and the rest being dependent in all actions generally, even the gift of female property and the like, without the assent of the husband or master, is not valid.

LVI.

MENU :—Three persons, a wife, a son, and a slave, are declared by law to have *in general* no wealth exclusively their own; the wealth which they may earn is *regularly* acquired for the man to whom they belong*.

Persons not their own masters, are sons, slaves, and the like: this supposes property belonging to the son, slave, and the rest; for the gift of that which belongs to the father or master is void, because it is made without ownership (Chapter II, v. XXVII).

Again; by declaring the dominion of women over female property, it is shown that the gift, *made by the husband*, is void; and the alienation of *other property* is void, because the wife has a title to the husband's estate (Book V, v. CCCCXV); and the son has ownership in the paternal estate during the life of the father (XXXI); but this (LVI) must be understood of property acquired by the wife, son, or slave. "A householder is not independent, &c." (XV 3); the father has not power to give or aliene, for civil purposes, gems, pearls, land or the like, which have descended from ancestors, nor immoveable property even though acquired by himself (XIV).

Thus they interpret the law: but that is not satisfactory; for it has been already answered. The gift even of the immoveable patrimony, for religious purposes, is valid without the assent of sons and the rest; for excellent usage has legalized *such donations*, and no particular ordinance is found on this point: neither VIJNYÁNÉSWARA, nor any other author, expressly declares that property inherited from the paternal grandfather, and given by

* See Book III, Chap. I, v. 52.

by the father without the assent of the sons, is a void gift. Thus, in explaining the text, "the father and sons have equal dominion, &c." (XXXI), VIJNYĀNĒSWARA says, the son may oppose a father attempting to give away property inherited from the paternal grandfather. Therefore, persons not their own masters, as a son, slave, or the like, are mentioned because they are nearly connected with the owner; it might *on that account* be doubted whether their gifts be valid: there can be no question whether a gift made by a stranger be good in law; therefore it has not been noticed.

"One insane" is not in his natural state. A gift made by an outcast is void, because property is forfeited by degradation.

"In consideration of work unperformed:" what a man gives, deceived by the promise of the donee, "I will execute this business for thee, give me a reward," is not a valid gift if the work be unperformed: and this relates to the payment of wages. So in regard to a gift in expectation of a grateful return.

If some person, having no issue, tell any man related or not related to him, "I give thee all my property, and thou shalt perform the last duties for me;" but the land or the like be afterwards occupied by the donor; what is the rule in regard to the validity of the gift? Without occupancy, the donation cannot be valid: but if the donee reply, "I give this to preserve the aged giver from poverty;" not, "I relinquish this;" then the gift is valid on proof of occupancy. The donation is null, if the consideration be void; the ground for invalidating the gift is the failure of *any* part of the declared purpose.

Here an observation should be made. If it be asked, what is the rule, in the case where some considerations, such as maintenance for life and so forth, are performed; and some considerations, such as the funeral rites are not performed? *the answer is*, the gift is void, because the donee's agreement is broken by not performing the whole contract, and because there is a failure in some part of the declared purposes.

In the *Mitācsharā* the distinction is declared between a diseased man and one agitated by *the pain of* a disease: "a diseased man," afflicted with any disease; "agitated by pain," afflicted with an incurable disease. If it be leprosy or the like, the man afflicted with that distemper has not ownership in the estate; but if the
giver

giver have ownership, it is not consistent with reason that the payment of wages or the like should be void. Nor is it proper to say, that this prohibition regards only what is given from friendship; for there is no such limitation of the law. This and other points should be considered.

But others explain "agitated by pain," afflicted with a distemper which destroys sense, as a complicated marasmus or the like; and "a diseased man," one whose sense has been destroyed, without such a distemper, and without intoxication, but by swallowing pernicious drugs or the like.

BHĀVADĒVA, CHANDĒSWARA, and VĀCHESPATI remark, that a gift made for religious purposes, even by a diseased man, is valid (III). This should be admitted, and is meant by JĪMŪTAVĀHANA, RAGHUNANDANA, and others: but there is no question on the validity of gifts for religious purposes, since NĀREDA limits the rules to civil donation (II 2); and this text (III) is quoted by MISRA under the title of Loans and Payment, and is explained by us, in the first book, as applicable to the subject of the payment of debts.

In fact, as rich and easy signifies possessing wealth and tranquillity, so the text must be acknowledged to signify, that gifts made by persons in the circumstances described, (agitated by fear, &c.) are void. A gift made by one influenced by avarice is valid, if the profit be obtained; else it is void: but a donation made without ownership is always null. Gift *or delivery of things* as wages, for pleasure, for purchase, as a nuptial fee, as a grateful return, as a present to a worthy man, from natural affection, or from friendship, are valid *and irrevocable*. Hence, what is given for a declared religious purpose, even in sickness, is not invalid; for, CHANDĒSWARA holds, that a present to a worthy man is a gift for a religious purpose; and it is excluded from void donations. Even a minor makes presents on the eleventh day after his father's death; though given by a minor, they are *legal* gifts: his sense being unripe, the donation may be made by instructions from others, as he is taught to play at ball or the like. A gift may be made even by a person who is not his own master: thus, any man having authority over him may cause him to give the thing for a necessary purpose; so, in other cases: but a payment of wages or the like, by a man agitated

tated by anger or the like, is valid, provided his mind be tranquil during that act and at that time; otherwise it is not, for contracts are universally forbidden during a state of insanity or the like (LIV).

LVII.

MENU:—A contract made by a person intoxicated, or insane, or grievously disordered, or wholly dependent, by an infant, or a decrepid old man, or, *in the name of another*, by a person without authority, is utterly null.

LVIII.

YÁJNYAWALCYA:—A contract made by a person intoxicated, or insane, or grievously disordered, or disabled, by an infant, or a man agitated by fear or the like, or, *in the name of another*, by a person without authority, is utterly null.

Since there are no other texts of MENU and YÁJNYAWALCYA explaining illegal donation, the enumeration of void gifts must be taken from these. Singly, the gift of wages by a man possessing his senses is valid; joined with madness or the like, the intentional payment of wages during a lucid interval *may also be valid*; but singly, a gift by a man affected by insanity or the like is void. Such is the meaning.

If the validity of gifts made in consideration of duty, notwithstanding sickness, be intended by authors; then a similar donation, by an insane person, may be valid, from parity of reasoning, in the want of positive texts. This and other points should be determined.

MISRA observes, that gifts from an impulse of lust or anger have been explained in the case of Loan and Payment; and after premising the words ‘in fact,’ he inserts the text of CÁTÝÁYANA (Book I, v. CCIV).

What is the rule in regard to things given by an indolent man or the like, or by a weak man and so forth ; for both are omitted ? If extorted by fear or the like, the gift is void ; if that do not attend the donation, it is valid. In fact, a gift attended with any defect is void ; but a donation springing from a *sufficient* motive is valid.

An observation should be here made. If it be asked whether a commodity sold, and a loan advanced, be stated in the number of irrevocable gifts, or in the number of void donations, and what is the rule respecting them ; *the answer is*, the one might be comprehended under the term *which has been explained* the price of a commodity sold, *for it may mean* a commodity receivable for a price ; and the interest of a loan may be *deemed* a present given as an acknowledgment to a benefactor, but regulated by the law. Or what is declared by ordinances concerning loan and payment, may be added to the number of irrevocable gifts, under the remark of CHANDÉSWARA, “ it is not implied that one *text* curtails another.”

CÁTYÁYANA explains *utcōcha* or bribe.

LIX.

CÁTYÁYANA :—Whatever is received for giving information of a thief or a robber, of a man violating the rules of his class, or of an adulterer, for producing a man of depraved manners *ready to commit thefts or other crimes*, or for procuring a man to give false testimony,

2. That is all denominated *utcōcha*, or *given on an illegal consideration* : the giver shall not be fined ; but an arbitrator or intermediate person, *receiving a bribe*, shall be held guilty.

When theft and violence are both committed, the offender is “ a thief and robber.” “ A man violating the rules of his class ;” an outcast : CHANDÉSWARA explains the terms similarly. What is promised to the person who produces a thief, a
robber,

robber, an outcast, an adulterer, or a man of depraved manners, or to a person who suborns false testimony, is called *utcôcha*: the same *authority* expressly declares, that, if promised, it shall not be delivered; if given, it shall be resumed.

LX.

CĀTYĀYANA:—If a bribe be promised for any purpose, it shall by no means be given, although the consideration be performed:

2. But if it had at first been actually given, it shall be restored by forcible means; and a fine of eleven times as much is ordained by the son of GĀRGA and by the son of MENU*.

A bribe promised, as the recompense of an evil act, shall not be given, though the consideration be performed.

Utcôcha, or *utcôcha*, is of both genders, (*masculine and feminine*,) as shown in two different texts.

If it had been first received, and the information afterwards given, it must be restored. In this explanation, MISRA, CHANDÉSWARA, and the rest, concur. If he refuse to restore it, he shall be compelled by forcible means, and a fine shall in this case be imposed: and that penalty is fixed at eleven times as much as was promised. So CHANDÉSWARA.

Whom does the fine concern? The receiver of the bribe. That the giver (the person who obtains secret information by the disbursement of money) should be fined, he denies in the former text, "the giver shall not be fined." But if an arbitrator or intermediate person (*for the word has both senses*) receive a bribe, he shall be punished. Herein the *Vivāda Chintāmenī* concurs. In fact, if one be concealed, and another search for him, the intermediate person, deluded by a bribe, and producing him, shall be held guilty. CHANDÉSWARA explains it, "the intermediate person and he who causes the bribe to be given shall not be punished, but the receiver shall be fined eleven times as much." His meaning is, that the giver, or person who causes

* Another reading gives the name of GA'LAVA.

the bribe to be given, and the intermediate person employed, shall not be fined.

According to the *Vivāda Chintāmeni*, the *privative A* is inserted; *asatya*, false testimony. But some read *satya*, or true testimony. Truth must necessarily be spoken even without wages: but if a man, receiving hire, or the promise of it, give true testimony, it is proper he should restore the money, because it has been received for a business in which wages are improper. But he who from avarice consents to act dishonestly in giving false testimony, should not be compelled to restore what he receives, because it is the price for which he sells his honesty. Thus they interpret the text. But the reading of the *Vivāda Chintāmeni* tends to maintain honesty: thus, if the practice suggested by such an ordinance be duly enforced, none would receive a bribe to procure false testimony, provided the promoter of a false suit conceal it not.

Others say, what is given for a false accusation of theft, or for the discovery of depraved manners, or to procure false testimony, may be resumed; and, if promised, it should not be delivered. On the question whether the giver shall, or shall not, be fined, (for he might be amerced, since he commits an offence,) the text declares, "he shall not be fined." Since a false accusation is infamous, there might be some amercement imposed on the suborner as guilty of an offence; but the law has excused the fine. The intermediate person between the accused and the suborner, preferring the accusation from a motive of avarice, shall be fined: or, according to another construction, he shall not be amerced; that is, he shall not be fined in an equal amercement; but he shall pay a quarter less than the amercement mentioned in another place, for he is guilty of an offence. The grounds on which the bribe is restored, are, that the gift is made for the purpose of deluding: what is the rule if it be given in earnest? It shall not be restored, for it is given by an owner who is his own master. But what is given or promised for the purpose of deluding, is not good in law. "If a bribe be promised for any purpose &c." (LX); this means what any person, solely considering the accomplishment of his purpose, promises for the sake of delusion: and this should be understood of business for which wages are not proper.

LXI.

CĀTYĀYANA :—What has been given by men under the impulse of lust, or anger, or by such as are not their own masters, or by one diseased, or deprived of virility, or inebriated, or of unsound mind, or through mistake, or in jest, may be taken back.

“One diseased ;” affected with disease and the like, or impelled by hunger and so forth. A gift made by one deprived of virility is void, for he has not power over the family-estate : but if he give away what he himself acquired, the gift is valid. It is not *directed*, that one deprived of virility, buying a commodity, should not pay the price ; *but, in regard to* what is given through friendship, *it* is consistent with reason.

“Of unsound mind ;” naturally incapable of distinguishing right from wrong ; or whose mind is alienated in consequence of disease, or of *magical* arts ; or who is deluded by a promise in this form, “ I will perform this work for thee.”

By saying, “ it may be taken back,” the gift is declared void. Donations made under the influence of grief or the like, or by a minor, must be understood from the concurrent import of this text with that of NĀREDA (LIII).

LXII.

VRĪHASPATI :—What is given by a person in wrath or *excessive* joy, or through inadvertence, or during disease, minority or madness, or under the impulse of terror, or by one intoxicated or extremely old, or by an outcast or an idiot, or by a man afflicted with grief or with pain,

2. Or what is given in sport ; all this is declared ungiven, or void.

3. If any thing be given for a consideration unperformed, or to a bad man mistaken for a good one, or for any illegal act, the owner may take it back.

A gift made through inadvertency, caused by joy, is not void ; but what is given without discrimination, the mind being disturbed by excessive joy, *is invalid* : or it may be understood of what is given through joy originating in lust. Inadvertency or mistake have been already explained. “Extremely old ;” one whose organs of sense are impaired : so MISRA. “Outcast ;” banished for his crimes : the term is so explained in the *Retnâcara*. “An idiot ;” the term is interchangeable with *mú'd'ba* already explained. “Given in sport,” or in play : so the *Retnâcara*. The word is synonymous with that which has been already explained, “given in jest.”

“Given for a consideration ;” in expectation that the donee will perform some work : if the consideration be not performed, the gift is void. “To a bad man,” (or to any unworthy man ;) as the gift of gold to a man of the servile class ; or a present to a vicious priest, where the declared intention was to give it to a virtuous priest ; for the text expresses, “mistaken for a good one.” However, what is given to an unworthy man, but without distinguishing whether it be intended for a worthy person or not, is valid ; for it is declared that every donation produces fruit, and none is declared universally unworthy of gifts.

LXIII.

MENU :—A gift to one not a *Bráhma* produces fruit of a middle standard : to one who calls himself a *Bráhma*, double ; to a well-read *Bráhma*, a hundred thousand fold ; to one who has read all the *Vé*das, infinite.

LXIV.

Uncertain :—Gifts are ever deemed virtuous, even though

though presented to a *Swapāca* or the like, but especially if given at a proper time and place, in proper form, and to a worthy man.

These texts cannot be said to relate to the gift of food; for there is no such limitation. The expression, "stone transports, not stone over the deep," is intended as praise of men who deserve gifts.

"To a person who calls himself a *Bráhmaṇa*;" who says, "I am a *Bráhmaṇa*;" but *in fact* belongs not to the sacerdotal class: and he must neither be vicious, nor degraded. "Ever," at all times, and in all countries, "gifts are virtuous," or productive, even though presented to a *Swapāca*, (a mixed class equal in degree to the *Chāṇḍāla*,) that is, presented to any person: but especially if given "at a proper place," in a country frequented by the black antelope, or on the banks of the Ganges or the like; "at a proper time," during an eclipse of the sun or moon; "in proper form," looking towards the east, delivering *cusa*, *tila*, and water, and so forth; "to a worthy man," to one who has read all the *Vēdas*, such gifts "especially" produce fruit; they produce the greatest reward.

"For any illegal act;" from this exposition of CHANDÉS-
WARA, compared with the gloss of CULLÚCABHATTA on the text of MENU (XLVIII), "if the man asking a gift for some religious act do not perform it, the owner may resume a gift thus applied to a purpose different from a religious one," his meaning may be thus stated, "for an act not religious:" for he admits such an explanation of the text formerly quoted from GÓTAMA. Consequently, if a man ask and receive a gift for a religious act, or for consumption, and give it to a harlot, the donation is void.

What is given for a false accusation of adultery is a void gift: what NÁREDA and CÁTYÁYANA call a bribe, or *utōcha*, is explained, according to the texts of other *Sages*, given for an illegal act. But this appears wrong; for that cannot be established in a text of NÁREDA to the same purport.

LXV.

NÁREDA :—But what shall be given ignorantly to a bad man, called a good one, or for an illegal act, must be considered as ungiven.

From the term “ignorantly,” and from the word “but,” it appears that this text does not set forth the invalidity of a gift delivered as a bribe for an accusation of adultery ; and there is no difficulty in saying that the text of VRĪHASPATI relates to the same *subject*.

If that for which the gift is made be not *performed*, the giver may resume it : so the *Viváda Chintámeni*. Consequently, if a man, saying, “I will give it to dancers,” do not so appropriate the gift, it may be resumed : but, the matter being trifling, a generous giver will not resume it. Such is the custom.

All these opinions should be admitted : but it must be considered, that, since the text last cited expresses “what is given to a bad man called a good one,” it would be elegant in the former text to limit “mistake” to the thing to be given ; else there is a vain repetition.

LXVI.

GÓTAMA :—The words of a man influenced by wrath, excessive joy, terror, sickness, or avarice, or of a minor, of a decrepit old man, of an idiot, or of one intoxicated or mad, are vain.

LXVII.

NÁREDA :—He who foolishly receives what is *deemed* ungiven, and he who gives what may not be *legally* aliened, should be punished by a king, who knows the law.

Void gifts of sixteen forms, as mentioned by NÁREDA ; and unalienable property, of eight sorts, as declared by the same.

The *Retnácara*.

The cases mentioned by other Sages should also be admitted : and what is extorted by force is likewise considered as ungiven (Chapter II, V. 10) ; and that is comprehended, in the text of NÁREDA, under gifts through fear.

A fine is ordained for him who gives what may not legally be aliened, not for the receiver ; therefore it is not inferred that it should be restored. It follows, that a gift of what *regularly* should not be aliened, is nevertheless valid. If any one give away joint-property, another owner comes and says, “ what power had he to give the whole ? restore therefore my share.” He cannot say, “ restore the whole estate.” Such is the usage seen in practice : but custom is derived from the ancients, *who were* versed in the law ; it cannot therefore be forcibly abrogated. But in some instances custom has been partly changed by self-authorized moderns, who pretend to wisdom, and neglect the law. To reconcile it, respect should be shown to the rules of jurisprudence, observing also time and place.

LXVIII.

MENU :—Let him fully consider the nature of truth, the state of the case, and his own person ; and, next, the witnesses, the place, the mode, and the time ; firmly adhering to all the rules of practice.

Let the king, inspecting judicial proceedings, detect fraud, and view the truth ; let him consider “ the case,” or what belongs to it, (for the term may be taken as a derivative bearing this sense ;) that is, the forensick practice respecting such things, whether cattle, gold, or the like : *let him avoid* trifling errors, lest he be derided for his want of sagacity ; and let him consider his own person, *remembering that* by just decisions he will partake of celestial bliss, and so forth : let him consider the witnesses, *whether they* be observant of truth, *or not* : let him consider the place and time, whether they be suitable ; and the form, whether the

the point contested be in its nature probable or improbable, and so forth. CULLÚCABHATTA.

Others thus explain the text: let him consider the truth; "this man speaks truth; that man speaks deceitfully:" let him decide the matter, detecting fraud and so forth. The same is intended by CULLÚCABHATTA. Let him consider the wealth of the party; his assets for the payment of a fine: consequently the meaning is, that an amercement should be imposed according to the ability of the offender. Let him consider "his own person;" let him reflect, "who am I?" I who am appointed by the supreme ruler to discriminate justice and injustice, have no other friend; neither the accused nor the accuser is a friend to be treated with partiality. This is also intimated by CULLÚCABHATTA. Let him consider the witnesses; let him confront and examine them, to ascertain whether they speak from contrivance, or relate the fact. Let him decide the matter by incidentally investigating the place and time, and so forth: in what place, and in what occupation, to approach the wife of another is a high offence; let him investigate all that, to impose the severest fine for an offence committed in that place and in that occupation. Again; since criminals, deserving capital punishment, are numerous in times abounding with iniquity, the depopulation of the realm might be apprehended; in that case, instead of capital punishment, let him confiscate the whole estate of the offender, command ignominious tonsure, and inflict other punishments, according to the nature of the offences, including theft. Let him consider "the form," or nature of the acts: even if the act be proved to have been done in jest or the like, he must inspect the judicial proceeding.

BOOK III.

ON THE

NON-PERFORMANCE

OF

AGREEMENTS, &c.

CHAP. I.

ON

THE NON-PAYMENT OF

WAGES OR HIRE.

SECT. I.—*On Servants and others bound to Obedience.*

I.

VRIHASPATI:—Unalienable *property*, and other *titles of gift*, have been fully declared: the rules for Servants are now delivered; and, first, is propounded, the title of Promised Obedience; 2. Next, Non-payment of *wages or hire*; and, lastly, Disputes between master and herdsman in *their* order. This is the triple distinction of Servants.

This topick of *persons* promising obedience, and of *such as are* disobedient, is a title of law. The *Chintāmeni*.

Unalienable property, and other *titles of gift*, (what may or may not be given, and what is or is not a valid gift,) have been fully declared; next in order the law respecting Servants is delivered. What relates to him who promises obedience, but yields it not, is a title of law, as disobedience and so forth: that is first propounded; the cases are decided with penalties, as specified in their proper place. “Next, non-payment of wages;” or withholding the hire of labour: afterwards, the disputes between master and herdsman are declared in order: this *distinction*, of *dependent* bound to obedience, of *hireling* receiving wages, of servant (such as herdsman) differently maintained, forms the triple distinction of servants. Such is the sense of the text; consequently, the rules respecting them, together with the contests between master and herdsman, form a single title of law, according to VRĪHASPATI.

But other lawyers, finding in the *Retnācara* a different reading of the text of VRĪHASPATI, (*Aśuśrūṣhābhyupētya*, instead of *Suśrūṣhām abhyupaitya*,) say, that the title of Judicial Procedure is named *Aśuśrūṣhābhyupētya*, a compound in which the last word is the subject, “disobedience of him who has promised obedience;” for it is similar to the compound *Rājadanta*, king of teeth, by the rule of CRAMADĪŚWARĀCHĀRYA; “in some other instances also the subject is placed last.” NĀREDA likewise so denominates this title of law.

II.

NĀREDA:—When a man yields not the obedience he has promised, it is called a breach of promised obedience, which is a title of law.

Literally, that man who, promising obedience, yields it not, is named by the forensick term of “not obedient as *he had* promised;” or his breach of duty is a title of judicial procedure called (*Aśuśrūṣhābhyupētya*), disobedience of him who has promised observance: consequently, the apposition gives this sense, “his title of law is,” instead of “it is a title of law.” They thus explain the last verse (1 2), “the distinct rules respecting servants,

servants, (under the heads of breach of promised obedience, non-payment of wages or hire, and disputes between master and herdsman,) form the triple distinction of laws respecting servants and wages."

The title of law respecting him who, promising obedience (or compliance with commands), afterwards yields it not, is called (*abhyupētyāśuśruṣhā*) promise and disobedience.

The *Mitācsharā*.

In fact, the words do not form a compound: consequently the sense of VRĪHASPATI's text is, "the promise and disobedience are first propounded; and thereon rests a double *subject of* contest." He mentions it, "wages, &c." non-payment of wages, and disputes between master and servant, are delivered in their order: "this, which will be mentioned, is the triple distinction of servants;" namely labourer, slave, and herdsman. The sense of NĀREDA's text is the same: neither is there any *needless* repetition; for in the first hemistich the title of law is not named. Nor is there any thing superfluous in it; for it is stated by way of example: the first hemistich describes the person implied by the name assigned in the second; and it is intended to exclude accidental disobedience. The text should be thus interpreted:

III.

NĀREDA describes servants:—Persons bound to obedience are in law declared by the learned to be of five kinds; four are servants or labourers; the rest, namely the slaves, are *of* fifteen *sorts*.

But in the *Mitācsharā* it is read; "among those the slaves are fifteen*." The sense is, persons bound to obedience are servants of five kinds; four are labourers; the other, called slave, is of thrice five, or fifteen *sorts*. VIJNYĀNÉSWARA, VÁCHESPATI MISRA, and others, so *explain the text*.

IV.

* *Tēśhām*, instead of *Śēśhāb*.

IV.

VRĪHASPATI :—They are declared to be of many forts, according to class and work ; and four-fold for science, for human knowledge, for love, or for pay.

2. Of these again, each is distinguished according to the difference of work.

They (servants) are declared to be of many forts. How? According to class and work ; according to the distinction of tribes and of labour. He mentions the distinctions of work ; “ science, &c.” “ Science ;” knowledge of the *Vēdas* and the like. “ Human knowledge ;” skill in arts and the like, explained in the Dictionary of AMERA, arts and ordinances, or *human sciences*. “ Love ;” *becoming a servant* through the influence of love. “ Pay,” *literally* wealth ; that is, money or goods. According to the distinction of labour for these causes, servants are discriminated ; these four kinds are again distinguished according to the difference of work : all this will be explained.

V.

NĀREDA :—A pupil, an apprentice, a hired servant, and fourthly a commissioned servant, perform work ; slaves are those born *of a female slave* in the house, or the like.

“ A pupil ” is one who seeks *the acquisition of science* ; an apprentice seeks *the acquisition of skill in arts* ; a hireling and a commissioned servant both seek pay. A servant “ for love ” is a slave of a particular description ; the other slaves are similar to servants for pay. Thus the sense is the same as in *the text of VRĪHASPATI*.

VI.

VI.

NÁREDA* :—The wife have declared their general dependence.

Here some explain dependence, or not being their own masters, as denoting that they are incapable of acquiring wealth for themselves. But others hold their dependence to mean subjection to a master; consequently the sense is, they commit a sin, and shall be punished as is proper, if they act without, or against, their master's commands: but there is no ordinance showing universally the property of their masters in what is acquired by them; but where and when it is shown by the law that slaves or others are incapable of property, even there and then what they acquire becomes the property of their masters: and this mention of dependence is intended to determine contests respecting the independence of master and servant, or of teacher and pupil.

VII.

NÁREDA notices the distinction of *servants* by class:—He is called a labourer by class, and has a distinct subsistence.

The meaning is, whatever be the servant's class, he should perform the work of it; and his subsistence *and abode* should *also* be regulated by his class. For instance, the use of arms, and a habitation in the best place, for a *Cshatriya*; clearing forests and the like, and a habitation in the worst place, for the lowest *'Sūdra*.

VIII.

VRĪHASPATI describes the pupil:—The triple science is declared to be the *Rĭch*, *Yajush*, and *Sáma-védas*; for

* Not named in the original, but the texts which precede and follow this are delivered as NÁREDA's; and it seems to be implied that this also is quoted from the same authority. T.

for these let him pay obedience to a spiritual teacher, as directed by the law.

The *R̥ich* and other *Vēdas* are mentioned generally, comprehending the *At'harva-vēda* and the like. "The obedience directed, or prescribed, by the law;" consequently, though it be not specified, obedience is necessary; and he who yields it not, may be reproved or chastised by the teacher, and the preceptor offends not. For the sake of science, obedience to an instructor must also be yielded by others than a *Bráhmāna*; for they study ordinances, or *human sciences*. This must also be understood.

IX.

NÁREDA:—Until he acquire the science, let the pupil diligently obey his preceptor; his conduct should be the same towards the preceptor's wife and his son:

2. *Afterwards*, performing the stated ceremonies on his return home, and giving to his instructor the gratuity of a teacher, let him return to his own house. This conduct is prescribed to the pupil.

By this a pupil is declared to be a servant. The *Retnácara*.

Here the punishment of a pupil, if he do not yield obedience, is not ordained: hence, since it is not here directed, no amercement is *paid* to the king.

X.

Smṛiti:—But in case of strife between teacher and pupil, father and son, husband and wife, or master and servant, their mutual litigation is not legal.

By this, judicial procedure, *in such cases*, is not forbidden*; but MENU declares that punishment may be inflicted by the teacher (XI).

* I suspect the negative to be an error of the manuscript. T.

(XI). It appears that, if it could not be borne, the acquisition of science would be prevented.

XI.

MENU :—A wife, a son, a servant, a pupil, and a younger whole brother, may be corrected, when they commit faults, with a rope, or the small shoot of a cane* ;

2. But on the back part only of their bodies, and not on a noble part by any means.

“Performing the stated ceremonies on his return home” (IX); performing the *Samāvarttana* sacrifice, and giving the teacher’s gratuity, for the sake of *obtaining* perfect fruit from his own act of *studying*, let him return home to *assume* the order of a householder, or married man. Such is the sense of the text (IX 2).

A pupil is mentioned under *this* title of law, to determine the rules respecting chastisement of a pupil by a teacher, and so forth.

XII.

GŌTAMA :—The correction of a pupil for ignorance or incapacity *should be given* with a small rope or shoot of a cane; the teacher shall be punished by the king, if he strike with any other instrument.

VIJNYĀNÉSWARA says; if a teacher, from an impulse of wrath, strike *his pupil* with a great staff on a noble part, then should the pupil, hurt in a mode contrary to law, complain to the king; there exists a subject of litigation.

If it be said, that this contradicts the text cited (X), VIJNYANÉSWARA replies; it is not intended to forbid important suits on the part of pupils and the like, for in some instances their suits

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* May I quote a maxim of no less authority? *Setāparādbhair anitām puṣpē-nāpi ne tādyēt*; strike not, even with a blossom, a wife guilty of a hundred faults. T.

are admitted : but the litigation of teachers and the rest is not laudable, either in a moral or civil view ; therefore pupils and others should, in the first instance, be discouraged by the king or the court : this is the implied sense of the verse (X). But, in very important cases, the suits of pupils and the rest may be entertained in the form mentioned.

But others hold, that the suit of a teacher against his pupil, a father against his son, a master against his servant, and, by parity of reasoning, a husband against his wife, is not legal, because the pupils and the rest are dependent on their teachers and so forth, and may be punished by them : the text (X) shows this very *rule*, and does not forbid the suit of a pupil and the rest against a teacher and so forth ; for GÓTAMA directs, that a preceptor, ill treating his scholar, shall be punished (XII). The text in question (X) signifies, that the pupil should proceed, *in other matters*, with the previous knowledge of his teacher. The meaning is, that a suit preferred before the king is irregular ; and, preferred by the teacher against his pupil, is forbidden. But if the pupil, or son, violate his duty, and the teacher, or father, being weak, is not able to correct him, it is consistent with common sense that he should then apply to the king ; for, by violating his duty, the pupil, or son, absolutely becomes *páshenda*, or irreligious*. This they *also* hold.

The suit of a teacher, if his gratuity be not paid, is not mentioned by any other *author* ; but hell is *the pupil's fate*, if he pay not a gratuity *to his instructor* (Book II, Chap. III, V. 34).

From the text *already cited* (IX 2) *it appears*, that so long, (*until the stated ceremonies be performed*,) obedience is required, and the pupil is dependent on the teacher (V. vi, and Book II, Chap. IV, V. xv 2). Therefore he should not go any where, nor consume any thing, without his preceptor's orders ; and what he acquires by labour, should be delivered to the teacher.

XIII.

YAJNYAWALCYA : — When called, let him study ;
and

* Literally, taking the marks of the four orders (as explained in AMERA'S Dictionary) ; but otherwise explained in this work (Chap. II).

and deliver what is gained to him (namely to the teacher).

What is given by him, may be consumed ; what is acquired by labour, may not be given to another : but, if *either* paternal wealth, or property acquired *by the pupil* during his minority, be given away, unknown to the teacher, or notwithstanding his prohibition, it is *nevertheless* a valid gift ; but there is offence in violating the prohibition.

Let him deliver what is gained to the teacher (XIII) : this is a moral ordinance ; for it is placed under that head. Consequently, duty is violated if it be not delivered to the teacher ; but he cannot forcibly take it : and since the pupil is the owner of that property, even what is then received as alms may, if the scholar give it away, be a legal donation. If this be alleged, they say, the same rule is established in this case as in that of learning arts (XX) ; the pupil is like a slave to his preceptor, and during that period *of tutelage* is every way dependent. But according to JÍMÚTAVÁHANA and others, it should be affirmed, that what is then acquired by labour, if it be given away, becomes a valid gift ; for *the case* is similar to *that of* a wife and the rest.

The pupil must also perform other labour in his preceptor's house.

XIV.

YÁJNYAWALCYA :—Let him constantly promote his *teacher's* benefit, by *every exertion of* mind, speech, body, and action,

And such practice is shown, in many instances, in the *Mahābhārata* and other *works*.

XV.

YÁJNYAWALCYA :—Those who are endowed with memory, and who are void of malice, intelligent,
P 2
pure,

pure, and auspicious, should be legally instructed, that they may be just, able, acquainted with what is good, and learned.

From this direction it should be deduced, that a pupil, endued with such qualities, and free from such defects, having undertaken to study, cannot properly be abandoned without a fault.

VIJNYANÉSWARA says, *treating* of the pupil, apprentice, hireling, and commissioned servant, the conduct of the pupil has been first propounded by the text *already quoted* (XIII).

XVI.

VRĪHASPATI describes an apprentice: — Arts, consisting of *work in* gold, husbandry, and the like, and *the art of* dancing and the rest, are called human sciences; let him who studies these, perform work in his teacher's house.

In the expression "gold, husbandry, and the like," are comprehended *work in* wood, traffick, and the rest. Dancing and the like include singing and so forth. In the *Chintāmeni* the text is read, "arts, *as* the manufacture of vessels of gold and the like, and *the art of* dancing and so forth, are called, &c." In fact, skill in business which requires study, but is different from *sacred* science, is *human* knowledge. This sense results *from the text*. He should perform, in the house of his preceptor or teacher, work relative to the art to be learned by him; as the manufacture of golden vessels, and the like, in the house of an instructor who works in gold; not *labour* of a different nature, as the thatching of a house and the like.

XVII.

NĀREDA:—Let him who wishes to acquire his own art, with the assent of his kinsmen, reside near an instructor,

instructor, fixing a well-ascertained period of *apprenticeship*.

2. Let the teacher instruct him, giving him a maintenance in his own house; and not employ him in other work, but treat him as a son.

“To acquire his own art;” the art suitable to his class. “A time or period ascertained” by the attestation of witnesses. “Not other work,” but *that which is proper* for instruction in the art.

The *Retnâcara*.

“Let him reside near his teacher” (*âchâryasya vafêd antê*): by this is expressed the derivation of apprentice (*antêvâsî*), or pupil for *instruction in arts*. “Giving him a maintenance;” the compound term may be explained, to whom subsistence is given. The teacher himself must allow a maintenance to his pupil: his own benefit is the *performance of a duty*, reputation gained, and some profit. In some places of the *Retnâcara*, the reading is, “giving hire;” still a subsistence is meant by the word “hire.”

In like manner, if a pupil for *the study of the Vêdas* need a maintenance, it is proper that the teacher should give it. It is not mentioned in the law, because moral duty alone is the principal consideration of a student in the *Vêdas*: yet it should be done, for otherwise duty is violated.

“But treat him as a son” (XVII); not, like a slave; employ him at pleasure.

XVIII.

CÂTYÂYANA directs a penalty for employing an *apprentice* in other work:—He who does not instruct his *scholar* in the art, and causes him to perform other work, shall incur the first amercement; and the pupil is therefore released.

“He who does not instruct his apprentice in the art;” the teacher who, having promised instructions, but either employing the scholar much in other work, or acting from the impulse of

wrath, does not teach him the art, shall incur the first amercement : and the pupil may forsake him, and go to another teacher.

Then, how is he required to perform work (XVI) ? Some reply, it is not forbidden to require obedience from him : but it is forbidden to employ him in business inconsistent with instruction and occupying much time ; such as travelling to many places, thatching a house, and the like. But others hold, that work, in the text of VRĪHASPATI (XVI), intends the business which is to be learned ; it corresponds with the text, “ the profit of whatever work he may there perform ” (XX) ; and he should be employed in such labour. But if the teacher instruct him to the best of his knowledge, and do not employ him in other work, then the pupil forsaking his teacher, and going to another, shall be chastised.

XIX.

NĀREDA :—But he who deserts his teacher, though instructing him and not culpable, shall be compelled by forcible means to reside *with him*, and is liable to stripes and confinement.

“ *Corporal punishment*,” blows and the like ; “ *confinement*,” or restraint : so a certain author *has explained the terms*.

The *Ketnācara*.

“ *Confinement* ;” binding.

The *Chintāmeni*.

For the loss of life (*the literal sense of the first term*) would be incongruous. This is considered. The teacher should himself inflict the stripes or other punishment, according to law ; not on a noble part by any means (XI 2), but with a small rope or shoot of a cane (XII). The same chastisement is proper for desertion and for ignorance. The spiritual preceptor and pupil are similar to the teacher and apprentice, but are distinguished by the difference of *their* motives : the pupil studies the *Vēda* on account of duty ; the apprentice learns an art for the sake of wealth. Thus some *interpret the law*.

Others hold, that a pupil may be punished by the teacher, if the pupillage were undertaken with the assent of kinsmen ; for
he

he has not tutorage, unless apprenticeship were agreed to: and here a lawsuit arises, on application made to the king.

But, in fact, *it appears* from the mention of the assent of kinsmen, *that* the pupillage lasts so long as the kinsmen do not withdraw *the boy*; *in the mean time* correction *may be given* by the teacher: but if his kinsmen withdraw him, a suit may be maintained; and if the pupil have no kinsmen, *still* it is inferred that a lawsuit may arise on account of desertion.

If, through an aptitude to learn, the pupil become perfectly instructed in his art before the expiration of his apprenticeship, he shall nevertheless serve his master the full time.

XX.

NÁREDA:—Though he have learned *his art*, the apprentice must fulfil his stipulated time; and the profit of his labour during that period shall belong to his teacher.

“Stipulated time;” the period agreed to. “The profit of his labour;” wages or hire, and the like. The *Retnâcara*.

The hire receiveable, by the favour of the teacher, during the period of instruction; in that the pupil has certainly ownership.

XXI.

YÁJNYAWALGYA:—Though he have acquired his art, the apprentice must reside in his master's house during the period stipulated, receiving his subsistence from the teacher, and giving to him the fruit *of his art*.

The apprentice must reside in his teacher's house during the stipulated period; that is, so long a time as was agreed to: *for instance*; “I will reside in thy house four years, to study the art of medicine.” *If such an agreement were made*, even though he have gained the requisite knowledge before the expiration of four

years, still he must reside *there*. How shall he reside *there*? The answer is, receiving subsistence from his teacher, and applying to his benefit the fruit of those instructions *he receives from him*. He must so reside *in his teacher's house*. The *Mitácshará*.

Here, it should seem, from the expression "the profit of his labour," &c. (XX), that the teacher has ownership even in what the pupil acquires by voluntary *exertion in traffick* and the like, independent of his art, and by agriculture or similar means, and by treasure-trove or other *accident*. It cannot be said that it may belong to his father, under the texts *cited in a former chapter* (Book II, Chap. iv. V. 56), because there are no grounds for selecting *one rule in preference to the other*. His kinsmen have assented to his apprenticeship (XVII); and, according to law, it is the duty of an apprentice to acquire wealth for his teacher. Nor should it be said, that the work *meant* (XX) is limited, by the title *under which the text is placed*, to the business to be learned. There is no authority for such a limited construction. Thus some *expound the law*.

But others allege, as a custom, that the fruit of what is *done* through the means of the teacher, (*in consequence of instructions*,) belongs to him; but, in the case of treasure-trove or the like, the waif is taken by the pupil. According to JÍMÚTAVÁHANA, the pupil has, in every instance, a right to *retain* what is acquired by himself: this should be considered.

XXII.

NÁREDA:— At the *expiration of the* period, the apprentice, having acquired his art, and formally delivering to the teacher the best reward in his power, departs with *his* permission.

"Having acquired his art:" this intimates that if the art could not be learned in the time first stipulated, he should stay, again fixing a period *of further apprenticeship*; not that he should stay until the study be completed within the time first stipulated. For the stipulated period is shown to be *the principal consideration*, by directing

directing the apprentice to fulfil his time even though he have learned *his art*. (XX).

When the time, or stipulated period, is expired, *the apprentice departs*, having presented a gratuity to the teacher, *after formally* walking round him ; and this is done as a token of respect : obtaining his approbation to the best of his power ; giving the best reward in his power, and obtaining *his instructor's* approbation ; or doing that which is the best reward for the teacher. " To the best of his power " refers to the reward*.

This (*the apprentice*) is the second labourer, a *servant* for human knowledge (IV). A servant for love is included among slaves, and will be *hereafter* mentioned. NÁREDA describes the third labourer by the name of hired servant.

XXIII.

NÁREDA : — Labourers should be considered as of three sorts ; highest, middle, and low : the hire of their labour should be proportioned to their strength and to the benefit *derived from their exertions*.

2. A soldier is the highest of these ; a servant in husbandry is middlemost ; a carrier of burdens is lowest : this is the three-fold distinction of hired servant.

" *Bhañi*," benefit. " Hire of their labour ;" the wages fixed for their labour. The *Retnācara*.

Consequently wages should be given according to the strength of the servant, according to the work effected, and so forth : for instance, one *hired leader*, by his own exertion, repels a hundred hostile armies ; another repels one foreign army : their wages should be proportioned to their power. " Benefit ;" particular effect of service, explained by the Sage himself ; " a soldier is the highest of these." Or, *it may mean that* soldiers should be distinguished according to their principal or inferior charge ; as the soldier posted in the rear. So, in regard to the man who
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* The last remark has guided the translation. T.

thatches the house, or who collects the grass or the like: their wages should be paid according to their work.

XXIV.

VRĪHASPATI: — The servant for pay is declared to be of many sorts; another is the servant for a share *of the gain*. Of all, a low, a middle, and a high rank is propounded.

2. A servant hired for a day, a month, a fortnight, six months, or a year, must perform the work engaged for: and he receives the promised *reward*.
3. The foldier is the highest of these; the ploughman is the middlemost; the porter is declared the lowest, and so is a servant employed in the business of the household.
4. A servant of the second description is declared to be one hired for a share *of the gain*, in the service of a person living by agriculture, or by *attendance on herds of cattle*: no doubt he shall receive a *share* of the grain produced, or of the milk.

The servant for pay is of many sorts or descriptions; a hireling, an agent, and the like: another servant for pay is called a labourer for a share *of the gain*. These are the servants for pay mentioned by VRĪHASPATI in a former text (IV); for the labourer for a share of the produce is a servant for pay *given* in the form of a share. Of all the servants for pay, except the labourer for a share, a low, a middle, and a high rank is declared: this has been *also* mentioned by NĀREDA (XXIII), and shall be explained.

He who undertakes service for one day, is a servant for a day. So a servant for a month. “Half,” *in the text*, signifies half a month, *or a fortnight*; a servant for half a month *or a fortnight*: so a servant for six months, and a servant for a year. “Each must perform the work engaged for:” he must perform that
very

very work which the person stipulated when he hired *him* as a servant, and not any other work. Thus, hired on a stipulation for bringing water, he need not carry burdens, nor bring wood from the forest; but, hired on a stipulation for bringing fuel from the forest, he must fetch wood. In case of dispute, it must be determined by the *tenour of the compact*. But if they mutually consent to *other employment*, then every thing is proper by mutual agreement; no suit can be maintained at a subsequent time, for the party has himself previously consented. But if a porter, hired to fetch wood from the forest, finds imminent danger to his life in that *employment*, he has a right to quit it, notwithstanding his previous agreement. If he undertook it, knowing the great risk of life, and afterwards, again hearing of the danger, or not hearing of it, recede, what is the rule in that case? In the case of imminent danger the employer cannot compel him, if he refuse to abide by his agreement. But this rule is not applicable to soldiers and the like; for their employment is connected with risk of life. This should be considered as consistent with reason.

“He receives the promised wages” (XXIV 2): when he stipulates less or more wages than are given by people in general for the same work, the stipulated hire is received under the authority of the text. If he stipulate more or less wages than are proportioned to the work, that very hire should be received. But an agreement for less or greater wages, unintentionally made, either by deceit through false promises, or *extorted* by force or the like, is not valid, as stipulated interest, not specially and freely promised by the debtor, need not be paid (Book I, v. XXXVII). This should be admitted, and is necessary: but greater favour depends on the will of the master.

Of these servants for pay, the soldier is the highest *in rank* (XXIV 3). This is not exclusive; for, it is proper also to consider a person skilled in accounts as included among servants of the first rank. A ploughman and servant in husbandry are ultimately the same: nor is this exclusive; for an architect and others are entitled to a place in the second rank. “A porter, &c.” (XXIV 3): this is similar, since there are *other* servants declared equal to him: “and so is a servant employed in the business of the household” (XXIV 2), bringing things for the use of the household and the like: he who performs these various offices

offices is also a servant of the lowest rank ; and others are also comprehended in the mode pointed out. Nor does it derogate from NÁREDA, that he has not mentioned the servant employed in the business of the household.

“ Another is the servant for a share of the gain :” what is thus mentioned (XXIV 1), separates two titles. The servant to whom food and vesture are given, and the labourer to whom *a share of the gain* is delivered, form the double title, as will be mentioned (LXVII) : and that labourer for a share is declared to be the servant of persons living by agriculture, or by herds of *cattle*. This again is general ; there may be servants hired for a *share of the gain* by persons subsisting by *the manufacture of cloths* and the like, *as weavers and others* ; and by persons subsisting by flocks of goats, *sheep*, and the like. A servant for participation is one hired for the consideration of a share. This sense of the word the Sage announces : “ the servant hired for a share of gain, in the service of a person living by agriculture, shall receive *a portion* of the grain produced ; and in the service of a person living by herds of *cattle*, shall receive *a share* of the milk ;” here “ share ” must be supplied, according to the *Retnâcara*. What share ? It will be mentioned in another place.

A commissioned servant is included by VRĪHASPATI among servants for pay. In regard to him also, the rule of high and low rank is to be understood according to the circumstances of the case. But NÁREDA describes him as the fourth labourer, and different from the hireling.

XXV.

NÁREDA :—He who shall be commissioned for affairs, or for the superintendence of the family, should be considered as a commissioned servant ; and he is *also* called a family-servant *in some instances*.

“ *Things* ;” affairs. These two *servants* are named, in judicial procedure, commissioner and family servant.

The *Retnâcara*.

The sense is, “ commissioned ” by the king, or other person,
for

for affairs, such as the protection of the subjects, the receipt of his revenue, or the maintaining of an army for war, and so forth; and by others also, for collecting the produce of the soil, or for the management of commodities bought or the like. The same should be understood of one appointed *to act for his principal* in a law-suit. "Commissioned" over the family is obvious, though not mentioned by him (*by the author of the Retnâcara*): he who is appointed to provide the food and clothing of the family is a commissioned servant. "These two;" commissioned for affairs, and commissioned for the family: such is the meaning of *the gloss*.

Are they synonymously or severally named commissioner and family-servant? Not the first; since commissioned for affairs would be the accepted sense of the term family-servant. Nor should it be affirmed that this must be admitted on *the authority* of the text, for it may be otherwise applied: and it is directed, at the time of affixing a meaning to a word, not to admit a sense by acceptance, when the derivative sense can be *used*.

A Rule of Philosophy:—An accepted sense, being once admitted, excludes the derivative sense; but, when proposed, it is inadmissible if the derivative sense oppose it.

Nor should it be said, that here should be admitted a secondary sense without losing the literal signification, for that cannot be received unless there be some objection to the obvious meaning. Thus, "he," in the expression "he should be considered as a commissioned servant," being applicable to the officer commissioned for affairs, and to the servant commissioned for the family, both comprehended under this term *used* in the singular number, commissioner is a name for each of them; "and he," the servant commissioned for the family, as is obviously meant, is called a family-servant. This may be the sense of the text.

Nor is the second *construction* admissible, that "one is a commissioned servant; the other, a family-servant." For the servants commissioned for the family, excluded from the name of commissioner, would be excluded from the subdivision of *the subject*, as proposed in former texts (III and V).

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On this point it is said a secondary sense must be here partially admitted, and both be comprehended even under the term family-servant. Where the word cannot be pertinent without a secondary sense, such a meaning must be affixed; *but*, how is it inserted in the text for that purpose? In the expression "the cowpen is situated on the Ganges," and in similar instances, the word Ganges being explained in the secondary sense of its shore, the *Ganges*, or stream of water in the tract of BHAGÍRAT'HA'S car, is not included with the shore signified by the word Ganges. This argument is wrong; for the term is here employed in a secondary sense, without losing the literal signification. This is meant in the *Retnácara*, and should be considered as accurate: hence it is said, "*so named in judicial procedure.*"

XXVI.

NÁREDA:—Four servants are declared to be those who perform pure work; but they who do impure work are the slaves of fifteen sorts, *some properly so called, others improperly**.

2. Work is declared to be of two sorts, impure and pure: impure work is assigned to the slave; pure work, to the servant.

"Four servants;" a pupil, an apprentice, a hired servant, and a commissioner.

"To the servant;" to the pupil and the rest of four servants.

The *Retnácara*.

"Those who perform pure work:" consequently the pupil and the rest should not be employed in cleaning the house and the like. It appears from the ordinance, that even a hired servant should not perform that task. But if any person, allured by temporary hire, be willing to do such work, for one who has no slave, and who is himself unable to perform it, may he be so employed? or should he be included in some one of the descriptions which will be given of slaves of fifteen sorts? He who consents to do

* This observation is added from Sir W. JONES'S translation of the text, as cited in the *Vivádārṇava setu*, where it is attributed to VRĪHASPATI.

do the work of a slave, must perform it: in this instance there is no fault on the part of the master. Then, why has this text been propounded? When servants are not willing to do the work of a slave, then their master may not forcibly compel them: but when slaves refuse to perform that work, he may compel those *slaves* by forcible means. The text should be considered as propounded for this purpose.

XXVII.

VRĪHASPATI *:—Cleaning the house, the gate-way, the necessary, and the road, removing the dirt and rubbish, and all other impurities,
2. Attending the master at his pleasure, and rubbing his limbs, are to be considered as impure work; and all other work as pure†.

Though it be said in this text that all other work is pure, yet there is no exclusion of other *work not specified*.

XXVIII.

CĀTYĀYANA :—The sons of slaves must absolutely do the work of removing urine and ordure, attending their naked master, and handling cows and the like.

The *supposed* limitation in the preceding text is done away by the additional mention of attending a naked master and handling cows and the like: and it is confirmed, that the customary office of removing the dirt of the body and the like is comprehended in the texts. However applied, the rule is not infringed, since the texts are intended only as examples.

“ Attendance

* The authority is not named: but in the '*Arṇavaśetu*, and in the '*Vivāda Chintāmeni*, it immediately follows the texts there attributed to VRĪHASPATI, and here cited as NĀREDA'S.

† I omit the gloss on this text, which is indelicate. The text itself is translated freely.

“Attendance on the naked master ;” handing clothes to him.

The *Retnâcara*.

“Attendance on the naked master ;” rubbing his limbs while naked.

The *Pârijâta*.

Both interpretations should be admitted, for they are proper. But, on the explanation given in the *Pârijâta*, naked is unmeaning ; for, no other than a slave rubs the limbs of a master, though he be not naked.

Some remark, that, on a thorough examination of the texts, *it appears that*, where a person is hired, the performance of pure work constitutes a servant, and the performance of impure work constitutes a slave ; and a hired servant, doing the impure work described by the text, should be considered as a slave. Others hold, that slavery depends on the particular relation of property ; and service, solely on the engagement of the servant. If it be said, there is authority even over a servant ; *they answer*, this authority is not a cause of similar dependence ; it is the relation of command, *not of property*. Nor should it be objected, that a similar relation may extend also to a wife or a son. For they are distinguished ; or that is barred by the epithet of servant : and many do not admit the hire of slaves. As for *making* the admitted difference of dependence to constitute slavery, they deny it ; for it would not extend to slaves born in the house, and so forth.

These four servants are called persons bound to obedience, NÂREDA now explains the slave, or fifth description of persons bound to obedience.

XXIX.

NÂREDA :—One born of a female slave in the house of her master, one bought, one received by donation, one inherited from ancestors, one maintained in a famine, one pledged by a former master,
2. One relieved from great debt, one made captive in war, a slave won in a stake, one who has offered himself in this form “I am thine,” an apostate from religious mendicity, a slave for a stipulated time,

3. One maintained in consideration of service, a slave for the sake of his bride, and one self-fold, are fifteen slaves declared by the law.

“Born in the house;” born of a female slave in the house of her master. “Bought” for a price. “Received;” or acquired, by the acceptance of donation and the like. “Inherited;” a slave of the father, or other ancestor, passing by succession to the son or other heir. “Maintained in a famine;” in a season not good, at a time when provisions are dear, or, in other words, during a dearth; then maintained: that is, whose life has been preserved for servitude by food then given. “Pledged by a master;” his own slave pledged by the master to a creditor, for a loan received, to be his slave during the period of the loan. “Relieved from great debt;” redeemed from his creditor’s custody on account of a great debt, and therefore becoming a slave. “Made captive in war;” one whose life has been preserved by his consenting to slavery, when in danger of his life in battle; and thus acquired by the conqueror. “Won in a stake;” overcome after an agreement in this form, “if I be overcome in this contest, I am thy slave.” Who has offered himself in this form, “I am thine;” delivering himself in this form, “I am thy slave,” through desire of money or the like. “An apostate from religious mendicancy;” quitting the state of a mendicant. “Stipulated;” slave for a stipulated time; who has fixed a period in this form, “I am thy slave for so long a term;” and so forth. “Self-fold;” who has sold himself. These slaves of fifteen sorts are declared by NÁREDA. The text is thus explained according to VIJNYÁNÉS-WARA, CHANDÉSWARA, VÁCHESPATI, and BHAVADÉVA.

“Won in a stake;” won by gaming.

The *Pracāsa* and *Pārijāta*.

“Bought” and “received” may also mean boys purchased or received for adoption, but who have become slaves through some failure in the form prescribed by the law. In that instance, “received” signifies given by the father and mother; and he who is self-given, is one who has offered himself in this form, “I am thine;” he will be mentioned by this description. “Maintained in a famine;” and who has consented to slavery; but of him who has not consented to become a slave, the servitude is not admitted

mitted by VIJNYÁNÉS'WARA ; for he particularly mentions consent *as a requisite condition* : and that is proper, since there is no proof of dominion acquired by maintenance alone. Yet persons bought, or received, may become slaves, although they did not consent to it at the time ; for they are in subjection, and cannot *now* become sons *after a failure in the forms of adoption*.

If it be said, they should become servants ; else a *Bráhmāna* might become a slave, though his class be exempted from slavery : therefore persons bought, or received, if they have not consented to become slaves, should not perform *impure work*, such as attendance on their naked master and the like : The answer is, the slavery of a boy, who has consented to adoption, being admitted by a text cited in Part II (Book V, v. CLXXXII) if the rites of *adoption* be not duly performed, servitude in general does really occur also in the case of persons bought or received, *if the adoption fail*. In fact, since he is taken for adoption, he should perform the office of a son ; but he becomes a slave if he be excluded (*in consequence of a failure in the adoption*) from the rites ordained by the *Vēda*, such as obsequies or the like. This is proper.

“ Pledged by his master ” (XXXI) : but, he who receives a loan on pledging himself is of the same description ; and he is a slave, if he have agreed to it for subsistence : but not otherwise, *for* he is a servant if he have agreed to service *only*.

“ Relieved ” from debt : this occurs in redemption from a debt due to another, and in remission of a debt due to *the master* himself, in consideration of the debtor's becoming a slave ; but a purchase results from the remission of a debt due to the master himself. However, it is so explained by authors. “ Relieved from great debt ” *comprehends* rescued from distress of other kinds.

“ Won in a stake : ” it is observed by authors, that *the verb* is used under the rule they quote, that verbs of this particular class are employed in the secondary passive. But in fact it is also used in the primary passive, under another rule : therefore, in a stake thus set, “ if I be overcome, I give thee that slave belonging to me,” the winner becomes the owner of the slave.

A slave, who offered himself in this form, “ I am thine,” is of two sorts ; with, or without, a stipulated time. Thus ; “ so long as I serve thee as a slave, so much money shall be paid monthly ; ”

monthly ;" or, " I will serve thee as a slave one year : " in these forms are two sorts of slave, offering himself in these words, " I am thine ; " *one* for a stipulated period, and *the other* for an indefinite time. But the slave for a fixed term, as subsequently described, uses a similar form of speech.

This may be understood of the slave made* by the party himself, like a son made, *or adopted*, as described by MENU (Book V, v. CCLXXXV). A son made, *but whose adoption is not completed* according to *legal* form, is included under slaves made : how this interpretation can have been omitted by authors, may be questioned.

An apostate mendicant is a slave to the king.

XXX.

CĀTYĀYANA :—Where men of the three twice-born classes forsake religious mendicity, let the king banish a man of the sacerdotal class, and reduce to slavery a man of the military or commercial tribe.

MISRA and CHANDÉSWARA explain *the term used in the text*, the *Cshatra* and *Vis*, *or Cshatriya and Vaishya*, collectively. Thus a man of the sacerdotal class is slave to none : but the *Cshatriya* and *Vaishya* become slaves to the king.

XXXI.

DACSHA :—If a man, after assuming religious mendicity, abide not by his duty, let the king cause him to be lacerated by the feet of dogs, and immediately banish him.

Deviation from his duty occurs when he takes a wife, like a
Q2 householder ;

* *Crīta*, or made, has been explained ' for a stipulated time ; ' taken literally, it admits of the interpretation here proposed by the compiler.

householder ; and in similar instances. That should be discussed under the title of Banishment.

“ A slave for the sake of his bride ” (XXIX 3) ; a man who acquiesces in slavery for the sake of love, as mentioned by VRIHASPATI (IV 1).

XXXII.

VRIHASPATI defines that *slave* :—But the man who cohabits with the female slave of another, should be considered as a slave for *the sake of* his bride ; he must perform work for her master, like other slaves, or like servants for pay.

As a servant for pay, (that is, a hireling,) or as a slave performs work for his own master, so must he serve his wife's master.

XXXIII.

MENU :—There are slaves of seven sorts ; one made captive under a standard, *or in battle*, one maintained in consideration of service, one born of a *female slave* in the house, one sold, or given, or inherited from ancestors, and one enslaved by way of punishment.

“ Made captive under a standard ; ” conquered in battle. As in the chapter concerning *Virāt*, (*in the Mahābhārata*), BHĪMASÉNA thus bespoke a king called SUSERMA, vanquished during the war which arose from the seizure of a cow on the south of *Virāt* :

Fool ! if thou desirest life, hear from me the conditions : thou must declare before a select assembly, and before the multitude, “ I am a slave :

2. On these terms will I grant thee life. This is a settled rule for him who is conquered in battle.

Consequently,

Consequently, since BHÍMA requires his declared acquiescence, one who agrees to it becomes a slave; not every person conquered in battle, *whether he take quarter or not*: and this, in the text of MENU, comprehends persons won in a stake.

“Maintained in consideration of service;” who has agreed to slavery in consideration of maintenance, whether in a season of scarcity or abundance. “Born in the house;” born of a female slave in the house. “Sold” by his father and mother, or by either of them; or “sold” by himself. “Given” by his father and mother, or by either of them; or self-given: and he who agrees to slavery in consideration of relief from distress, is self-given; for he gives himself on account of the favour conferred in delivering him from distress. “Inherited from ancestors,” (literally paternal); descended in succession from the father or other predecessor. “Enslaved by way of punishment;” who has agreed to become a slave to acquit a fine, under the text of MENU.

XXXIV.

MENU:—A man of the military, commercial, or servile class, who cannot pay a fine, shall discharge the debt by his labour: a priest shall discharge it by little and little.

But an apostate from religious mendicity is also enslaved, by way of punishment; for CÁTYÁYANA directs, that a *Cshatriya* and *Vaisya* shall become slaves of the king, to atone for the offence of apostacy from religious mendicity (XXX).

It must here be considered, that it does not appear, from that part of CÁTYÁYANA’S text (let the king reduce to slavery a man of the military or commercial class), that the king shall make him his own slave: he may cause him to become the slave of another; for this would be no infraction of the rule. But, on the question, whose slave does the apostate from religious mendicity become? slavery to the king is supposed by CHANDÉSWARA to be denoted by the terms of CÁTYÁYANA’S text: the meaning there is, let the king enslave him. On the question, to whom shall he be a slave?

slave? since this must be comprehended *in the text*, and since one other person is mentioned, he takes him as his own slave.

Is there not an inconsistency with the text of NÁREDA; for he further mentions the slave for the sake of his bride, and a slave pledged by his master (XXIX)? Some reply, the texts are intended to propound their servitude, not to enumerate the slaves; for they are so explained by VIJNYÁNÉSWARA. The servitude of seven persons is shown in the text of MENU (XXXIII), *it is not implied* that others besides those seven are not slaves. His text precludes a less number: not a greater number; for an explanatory enumeration permits a greater number.

Others hold, that a servant, for the sake of his bride, acquiescing in servitude through love, and giving himself into slavery for the gratification of his lust, is included under "one given" (XXXIII): and in him who is pledged by his master the property of the creditor is not acknowledged, but usufruct with the assent of the debtor. After the stipulated period, if the debtor do not redeem a pledge *given* for a fixed time, it becomes the creditor's property: how *then* are the slaves described by NÁREDA comprehended in the text of MENU? but VIJNYÁNÉSWARA admits the creditor's property in a pledge, even within the period of the mortgage; surely on his opinion, *they are not all* comprehended in MENU's text. *To this objection the answer is*, there is no proof of the creditor's property in a pledge within the period for which it is pledged; but, after that period, his property is acknowledged, and it ultimately becomes a secondary or inferior sale. Thus, if the agreement be in this form, "should I not redeem the slave at the expiration of the fifth year, this slave, and this property, belonging to me, shall be thine;" the principal sum being considered as the price, there is in fact the complete act of relinquishment at a subsequent time, after a prior receipt of the price. It must be admitted by VIJNYÁNÉSWARA and the rest, *that it means pledged* for the payment of a debt due to the man himself; for redemption from a debt to another is implied by "one relieved from great debt" (XXIX).

Thus the texts of MENU and NÁREDA correspond: but NÁREDA has mentioned fifteen sorts as an enlarged explanation, and to form the *necessary* distinctions in regard to the enfranchisement of slaves.

SECT. II.—*On Emancipation from Slavery.*

ART. I.—*On Enfranchisement of Slaves.*

XXXV.

NÁREDA : —Of those *slaves* the first four (*one born in the house, one bought, one received, and one inherited*) are not of right released from slavery : unless they be *emancipated* by the indulgence of their masters, their servitude is hereditary.

2. That low man, who, being independent, sells himself, is the vilest of slaves; he also cannot be released from slavery.

Literally “there ;” that is, among those slaves : the first quadruple set *is not emancipated* ; collectively, one born of a female slave in the house, one bought, one received in donation or the like, and one inherited from ancestors : these cannot be released, unless they be emancipated by a master, whose life has been endangered, *but has been saved by the slave* ; for the enfranchisement of slaves of all sorts, in that case, will be mentioned.

“Indulgence” *is explained*, in the *Retnācara*, affection. Consequently the slave born in the house, and the rest, may be liberated if the master be satisfied ; but not otherwise. Since one maintained in a famine and the rest are not comprehended, in the text of NÁREDA, under slaves received in donation and the like, they may be liberated. But it should also be inferred, that a boy received for adoption as a son given, and ultimately becoming a slave through a failure in *the forms of adoption*, is not liberated without favour ; since he also is one received *in donation*.

“Independent” (XXXV 2) ; *explained*, in the *Retnācara*, his own master. Consequently there is no fault on the part of a dependent person, subject to his father and mother.

“He also cannot be released from slavery” (XXXV 2) ; that

is, one who sold himself cannot be released from slavery. Hence emancipation is denied to five *slaves*. The separate mention of one bought, and one self-sold, is intended to denote a greater offence in the person who sells himself; but there is no offence on his part, if he sell himself for a religious purpose.

Mārcandēya purāna: — If I enter the flames unknown to the *Chāṇḍāla*, I shall again become his slave in *another* birth.

This is a reflection of the universal monarch HERIŚCHANDRE, who had become the slave of a *Chāṇḍāla* to pay the sacrificial fee, after giving his whole property to the holy Sage VIŚWĀMITRA, and who wished to commit himself alive to the flames, with his wife, through affliction at the accidental death of his infant son RÓHITĀŚWA. “Unknown to the *Chāṇḍāla*, &c:” that is, since a slave is dependent in *all* acts generally, he is not liberated even by voluntary death.

On this MISRA remarks, that “the speech of HERIŚCHANDRE regards the misconduct of a slave; else he could never be released from slavery *under any circumstances*.” It should be considered, that a slave is liberated by death; *but*, since it is shown by implication, in the *Mārcandēya-purāna*, that a slave is dependent even in regard to *life and death*, his suicide, though allowed by the law, would produce immoral consequences; hence, as a man is debtor to his creditor even in another birth, so he would become the slave of his former master. Yet, if his death happen by the act of GOD, he would be liberated from slavery; for there is no proof of the state of slavery continuing in another birth, and the connexion of servitude is *in general* limited to the period of life. As for the observation, that else he could not be released from slavery, it should be considered, that, by the favour of deities, he may be released from slavery, if he adhere to his duty. All this regards another world; there is not much use in further discussing the question.

XXXVI.

MENU: — A *Sūdra*, though emancipated by his master,

master, is not released from a state of servitude; for, of a state which is natural to him, by whom can he be divested?

The meaning is, even by the owner's favour, a 'Súdra, born of a female slave in the house, or otherwise included in the quadruple set, or *become* a servant of the lowest rank, cannot be released.

And a slave is not released from servitude without favour. There is no inconsistency if this be applied to others besides a 'Súdra, but born of a female slave in the house, or the like.

The *Retnácara*.

Emancipated by him to whom he had become a slave by capture in war or the like, a 'Súdra is not released from a state of servitude to *Bráhmanas*. Since servitude is natural to him, who can divest him of a state of slavery proper to the servile class? Hence, it is necessary that obedience be paid by a 'Súdra to a *Bráhmana*, or twice-born man. This is intended; else the subsequent enumeration of slaves would be nugatory.

CULLÚCABHATTA.

When some *Bráhmana*, becoming very poor, emancipates a slave, is he not liberated? As a son, so a slave, should not be forsaken. When in very great distress a man releases a slave, still, although the slave any-how provide his own subsistence by other work, he must return when his master recalls him, and perform the duties of servitude: the text is intended for this purpose. It is implied in CULLÚCABHATTA's exposition, that if the 'Súdra say, "because I have been abandoned by thee, therefore I will not do thee service," then the king shall compel him to *discharge the duties of servitude*; else the subsequent enumeration of slaves would be nugatory. Such is the meaning. If the sense of the ordinance be, "since he belongs to the servile class, he is the slave of twice-born men; therefore the king shall cause him to be employed in service, however reluctant:" then the particular allusion of this text to one made captive under a standard, and to one maintained in consideration of service, would be unmeaning; for the servitude of others, besides those made captives under a standard and the like, results even from their servile

servile class. It must however be considered, that the text *which enumerates slaves* (XXXIII) can also be applied to others besides *Súdras*.

XXXVII.

MENU:—Both him of the military and him of the commercial class, if distressed for a livelihood, let some wealthy *Bráhmaṇa* support, obliging them, without harshness, to discharge their several duties.

2. A *Bráhmaṇa*, who, by his power, and through avarice, shall cause twice-born men, girt with the sacrificial thread, to perform servile acts without their consent, shall be fined by the king six hundred *panas*.

It should not be objected, that, the servile employment of others than *Súdras* being forbidden by these texts of MENU, slavery is limited to this class; and the slavery of one made captive under a standard, should be established for *Súdras* only: and the sense of these texts is, that a *Bráhmaṇa* should with tendernefs support a *Cshatriya* or *Vaisya* distressed for a livelihood, but employ them in their own several duties; that is, employing a *Cshatriya* in military service or the like, and employing a *Vaisya* in commerce and so forth, he should maintain them. Consequently, this sense of the text being also inferred as a matter of course, the text is delivered as a rigid precept. It appears, therefore, that a wealthy *Bráhmaṇa*, having occasion for the service of a soldier or the like, should he, from anger or any other motive, omit to support those persons, shall be amerced. He must oblige the *Cshatriya* and *Vaisya* to discharge their several duties, not to perform servile acts. This also is a rigid precept, which the legislator delivers in the second verse. If he cause twice-born men, girt with the sacrificial thread, to perform servile acts without their consent, he shall be fined six hundred *panas*: and this, in the objector's opinion, agrees with CULLÚCABHATTA's exposition.

It

It is answered, the expression “without their consent,” admits servitude with their consent: and servile acts may be performed for a *Brāhmaṇa*, by a man of the military or commercial class, from religious motives; as it is related in the *Mahābhārata* and other works, that CRĪSHṆĀ, an incarnation of the divinity, who took upon himself the human body, and accepted the customs of the world, did present water to wash the feet of *Brāhmaṇas*. The author of the *Retnācara* also observes on the words “cannot be released from slavery” (XXXV), that they regard others besides *Sūdras*, but born of a female slave in the house and the like.

If an independent *Brāhmaṇa* employ a *Vaiśya* and a *Sūdra**, hired as servants for military duties, or for commerce or the like, in washing his feet, against their will, he shall be amerced. Such is the sense, as appears from the use of the term “by his power” (XXXVII 2).

Then, if a *Sūdra* at any time do not perform servile acts for a *Brāhmaṇa*, ought he to be forcibly employed in his service? It appears from the expression “cannot be released from a state of servitude,” that the state of servitude which has already occurred cannot be annulled. But, in this case, the man has not become a slave; what then shall be annulled? This should be considered.

It should not be objected, that the state of servitude was born with him; because that is intimated, by the words, a state which is natural to him (XXXVI); and accordingly the servitude, even of one unbought, is admitted by the following text:

XXXVIII.

MENU:—But a man of the servile class, whether bought or unbought, he may compel to perform servile duty; because such a man was created by the self-existent for the purpose of serving *Brāhmaṇas*.

The expression, “a state which is natural to him,” has no such meaning as supposed in the objection. What does it mean? When a *Sūdra* is born, is servitude to all men born with him? Or servitude

* So the MS. It should be *Cshatriya* or *Vaiśya*.

tude to no one in particular, but general, and *by which* he afterwards becomes the slave of him who takes him? Not the first; were it so, that 'Sûdra might be taken as a slave by all twice-born men; and if any 'Sûdra, not serving any person, were accidentally starved or the like, it would be a sin on the part of all twice-born men: a person cannot compel any 'Sûdra, *whom he meets on the road*, to perform servile duty. Nor is the second *supposition right*; for, servitude requiring a permanent connection, there cannot be a state of servitude without a master *to be served*; consequently it is proved, that the son of a female slave forsaken by her master is not, at the moment of his birth, slave to any man. Even though a state of servitude were admitted to belong to that 'Sûdra, there would be no use in *thus supposing* a perfect, but unconnected, servitude; for, even though he were a slave generally, yet, unless he be received *in donation or otherwise* by any one man, he cannot be forcibly seized by him.

On this point the *best* opinion is this: as property in gold, silver, and other effects received, may be divested by gift, sale, or other alienation; but not the dominion over a wife, though received like gold or the like; (for a husband and wife are not divorced by desertion or neglect :) so a slave also is not emancipated. But that is technical, not actual: for, during the period of desertion, there is no sin on the part of his master in not supporting him; and his master has no power over wealth *then* acquired by him. "A state natural to him" (XXXVI) is mentioned as a cause: and "natural" signifies produced at the creation, when the servile class was produced; *namely*, his *natural* subsistence by servile attendance.

If any slave, emancipated by his master, has undertaken servile attendance on some other person, and afterwards the former master claims him; what is the rule in that case? He belongs to the second master; because, in fact, he accepted *his service* at the very moment when his *former* servitude was ceasing. What is said of a *Brâhmana* compelling a man of the servile class to perform menial offices (XXXVIII), is intended to authorize the servitude of a 'Sûdra, after forbidding that of a *Cshatriya* and a *Vaisya*. By the expression "compel him to perform servile duty," is declared the propriety of employing a 'Sûdra in menial offices, whether bought or unbought: the word "bought" implies

plies slave in general ; “ unbought ” denotes hired servant and the like ; consequently there is no offence in employing him on slavish work, though he be a servant *only*. This is expressly declared.

Until a *Sûdra*, emancipated by his master, be taken by another, as thus explained, he may be remanded ; and a *Cshatriya* and *Vaisya* may be employed in servile duties with their consent : they may be released from servitude by the favour of their master, and cannot be again seized without their own consent. A master employing a *Sûdra*, whether he be a hired or a commissioned servant, in menial offices, shall not be amerced ; but if he employ a *Cshatriya* or *Vaisya* in servile duties, against their will, he shall be amerced. Such is the concise statement of the law.

That one born of a female slave in the house, one bought, one received in donation, and one inherited from ancestors, cannot be released from slavery, has been declared : NĀREDA next declares, that one who gave himself in this form, “ I am thine,” cannot be released from slavery.

XXXIX.

NĀREDA :—Over the slave, who, having given himself in this form, “ I am thine,” goes to another, the second master does not acquire absolute dominion : at pleasure the former owner may reclaim him.

This must be understood of a slave who goes of his own accord, without *emancipation* by the favour of his master.

“ Slave ; ” *literally*, one not his own master. “ If he go to another person ; ” if he go to become a slave : in that case the former master may claim that slave ; and the other master, though he have received him, does not obtain him *as a slave* : but, emancipated by the favour of his master, he may be released from slavery. This should be affirmed ; else it would be unequal that one born in the house and the like may be released from slavery, and that one who offered himself in this form, “ I am thine,” should be incapable of freedom.

It may be *admitted*, that, by their master's consent, a *Cshatriya* and a *Vaisya*, who have voluntarily undertaken servitude, may be released from slavery, and be received by another: but a *Sûdra* may not be taken by another master; for it is declared by MENU, that a *Sûdra*, though emancipated by his master, is not released from a state of servitude. This inference is denied. Since there is no proof of the former master's property after emancipation, an unowned slave may be received; and, a second property arising, both have not a distinct ownership. The title of both is absolutely similar; but the right of the second master subsists, because the slave has not been emancipated by him; therefore, without his consent, the former owner is prevented by this text (XXXIX) from seizing the slave.

It should not be objected, that the text of MENU (XXXVI) shows the former owner's property in a slave, though forsaken by him: hence, a second master acquires no property in a slave still appertaining to a former owner; for one peculiar right precludes another of the same nature. Property in an enfranchised slave, causing dependence and the like, is not literally admitted. That *another* may take him again into service, though enfranchised, is implied in the text of MENU (XXXVI); else, an enfranchised slave not being forsaken by his former master, the *Sûdra* would be deprived of a livelihood, since he could not be received by another: or the householder would be guilty of sin in not supporting the slave, though voluntarily dismissed; since there could be no relinquishment annulling his property.

If *it be* admitted that a right, called ownership, over the liberated slave, *subsists* to authorize the master to remand his slave, wherever he reside, *even* after he has found a livelihood by alms and the like, still there is nothing inconsistent with the right of the second master; for his property is of a different nature. But, in fact, no different title is admitted: for it may be explained by *supposing the* property annulled; and *another interpretation* would be inconsistent with *the notion of* a second master. The text of MENU (XXXVI) intimates the taking of *him* again into service, after emancipation from his last master, as well as from his first; for no distinction is expressed. Thus, according to authors, any slave emancipated by his master, received by another, and emancipated by him also, may be taken by his former master.

On

On the opinion, in which the slave for a stipulated time is opposed to him who gives himself in this form, "I am thine," this text (XXXIX) regards a slave for an indefinite term, as well as a slave for a definite time whilst the period *stipulated* is unexpired. A slave for a definite term is liberated after the period expires. But, according to authors, the slave for a stipulated term, as distinct from him who offered himself in this form, "I am thine," is not intended by this text (XXXIX). This should be admitted.

XL.

NÁREDA: — They who are stolen and sold by thieves, and they who are enslaved by force, should be liberated by the king; their slavery is not admitted.

Stolen by a robber in their infancy, or by a thief, and sold by him, but remaining silent at the time of the sale through apprehension of ill treatment from the robber, and afterwards telling the circumstances to obtain their freedom, *these* slaves should be released; and if the master refuse their discharge, they shall be liberated by the king: and they who are enslaved by force, (*Súdras*; and *Cshatriyas*, or *Vaisyas*, employed in servile work without their consent;) shall also be released by the king.

If a potent robber, seizing any person, sell him; and the person sold remain silent; in that case, he ought not to be liberated by the king, because the purchase was *made* through the fault of the person sold. This is denied; for, whether he have consented or not, the validity of his act under the impulse of fear is not admitted by YÁJNYAWALCYA (Book II, Chap. IV, v. 58).

XLI.

YÁJNYAWALCYA: — One enslaved by force, and also one sold by robbers, is released from slavery.

This text of YÁJNYAWALCYA (XLI) is cited by VIJNYÁ-
NESWÁRA

NĒŚWĀRA in this manner ; “ the legislator declares the law applicable to the slave and apprentice.” Consequently his meaning is, that one forcibly taken as a pupil is also released. But an apprentice is not suggested by the literal sense of the text ; for he is not a slave, nor is he bought. However, a pupil is comprehended in the rule by parity of reasoning ; and the obvious argument, noticed by this author, is also observed by us : moreover, should any person forcibly taking one fit to receive instruction in arts, compel him to reside in his house, and employ him in work ; or if any person, not having authority over the boy, to please a teacher of arts, deliver to him another’s child (without the knowledge of the father and mother) to receive instructions in an art ; in those cases also his apprenticeship is null. This is implied. VIJNYĀNĒŚWĀRA’s meaning is this : it appears from the legislator’s propounding the duty of an apprentice, after this text (XLI), by the verse cited in the preceding section (XXI), that an apprentice is also implied in this text.

But others say, that VIJNYĀNĒŚWĀRA, author of a commentary on the collected texts of YĀJNYAWALCYA, having premised the five descriptions of persons bound to obedience as delivered by NĀREDA, and not finding any mention of pupil, and of hired and commissioned servants, in this chapter of YĀJNYAWALCYA, says, “ he declares the particular law respecting slaves and apprentices :” therefore one verse (XLI) relates to slaves ; the other verse (XXI) relates to apprentices.

This might be suitable, if it were not repeated, when citing the other verse (XXI), “ he declares the duties of an apprentice.” In fact, from his use of the term “ applicable,” (“ he declares the particular law applicable to the slave and apprentice :”) the commentator hints another opinion : it may or it may not be so ; *still* compulsive apprenticeship and the like must be null under the general text (Book II, Chap. II, v. 10). This we deem a proper *exposition*.

“ And also one fold by robbers ” (XLI) : it is the opinion of VIJNYĀNĒŚWĀRA, that under the word “ also,” one pledged and one given are likewise released : and it should be understood, that a person won in a stake from a robber should also be discharged.

NĀREDA

NÁREDA declares the mode of emancipation for all slaves :

XLII.

NÁREDA : — Among those, whoever rescues his master from imminent danger of his life, shall be released from slavery, and shall receive the share of a son.

Among those slaves of fifteen sorts, whoever delivers his master from danger of life, is released from slavery, whether he be a slave inherited from ancestors, or be of another description. This is the general cause of enfranchisement of all slaves ; as mentioned in the *Mitácshará*, on explaining the text of YÁJNYA-WALCYA (XLIV), “ he who saves the life of his master, attacked by robbers, by a tiger, or the like, should be emancipated.” Therefore the construction is, among these slaves above described, (one born of a female slave in the house, one bought, one received in donation, one inherited, and one who offered himself in this form, “ I am thine ;”) whoever rescues his master, &c. This consequently obviates the bad interpretation, that one maintained in a famine, or the like, is not released from slavery on rescuing his master from danger of life ; for, in comparison with one maintained in a famine, the servitude of one inherited or bought is more rigidly permanent : and the emancipation of one who saves his master’s life, is mentioned generally by YÁJNYA-WALCYA.

Without *the consent of his master* to his emancipation, he is not released from servitude on saving his master’s life ; this consent alone effects his release from slavery : such is the inference of common sense ; for preservation of life, and every other service, is incumbent on a slave bought. If this be affirmed, the answer is, no such rule can be established without *authority from the text* of a Sage, or of an *esteemed* Author.

A master and servant, skilled in swimming, are crossing a river to go to another village. The master’s apparel accidentally becoming loose, his power *of swimming* is lost while he is busied in making fast his apparel ; and he is unable to pass the remaining

part of the river, measured by five or ten cubits *from the shore*; he is, however, landed by the servant, who had crossed before him, with the help of a boat or the like found on the shore. In this case, is he released from servitude, or not? It should not be affirmed, that he is released from servitude, in this case, under the authority of the ordinance: for it would be inconsistent with approved usage.

On this point, some observe, that where a slave, neglecting his own safety, and highly valuing his master's life, rescues him from the encounter of a tiger or the like, and is himself preserved by the act of GOD; in that case he is released from slavery. But if some person attempt to destroy a man by poison, and the slave of that man, discovering it, prevent him from eating the poisoned food; or if the master intended to go out of his house, not aware of a tiger standing at the door, but his slave, seeing the tiger, prevent him; in these, and similar cases, it may be admitted that he is not released from servitude. This should be examined.

“And shall receive the share of a son” (XLII); like a son, he shall receive a share of that man's wealth. That the slave should, like a son, take the heritage of a *Bráhmāna*, seems contrary to reason; but should be allowed, because it is admitted by VIJNYÁNÉSWARA. Thus, in the chapter on the Administration of justice, or Forms of judicial procedure, after premising slaves from the womb, and the rest, he says, “since it is declared by NÁREDA, that whoever rescues his master from imminent danger shall be released (XLII), what should bar his suit against his master, if he be not released, or if the share of a son be not given?” Therefore no doubt should be entertained on what is expressed by the text, in the sense *thus* investigated by authors. However, in some places no such usage subsists on *the occasion of* benefits received from slaves: and therefore, in whatever country it is not customary to give a son's share *to a slave*, in that country if a benefit be received from any slave, the share of a son should not be given to him (Book I, v. XCVIII).

In the *Retnácara* and other works this text (XLII) is cited; but nothing particular is said respecting it.

XLIII.

NÁREDA :—One maintained in a famine is released from servitude, on giving a pair of oxen ; for, what was consumed in a famine, is not discharged by labour *alone*.

“ One maintained in a famine,” or saved from death by food supplied during a scarcity of provisions, is liberated by the gift of a pair of oxen. The reason is assigned : what was consumed during the famine, is not discharged by his labour *alone*, but requires some other payment ; and that, under the authority of the text, is the gift of a pair of oxen. Such is the construction according to CHANDÉSWARA. Consequently one maintained in a famine, desiring emancipation from servitude, must give a pair of oxen ; so much is the consideration of his enfranchisement under the authority of the text : and what was consumed during the famine, is absolutely discharged by the work already performed by him ; but, on account of the difficulties of that season, and the great value of things *then* consumed, a pair of oxen must also be given. Such is CHANDÉSWARA’S meaning.

But MISRA holds that the sense is this ; he is released on giving what he consumed during the famine, together with a pair of oxen. Consequently, he must repay what he used during the dearth. By directing payment of what he consumed, it is not meant that the value it then bore should be made good ; but, if it cannot be repaid in kind, it should be paid by an equivalent for the price borne at the time of emancipation.

Is not what he then consumed repaid by his labour ? The Sage replies ; “ it is not discharged by his labour ” (XLIII). It is also said in the *Mitácshâra*, in a gloss on the text of YÁJ- NYAWALCYA (XLIV), ‘ one maintained in a famine, and one maintained in consideration of service, are emancipated on relinquishing their maintenance, repaying so much as has been consumed out of the master’s property from the commencement of *their* servitude.’ The meaning is this : it is intimated by the text, that property ceases on relinquishing maintenance, *that is*, food or eatables : but if one maintained in consideration of service,

do not eat his master's food for the space of seven or ten days in the month of *Āświni* (*a season of religious abstinence*), that is no relinquishment of maintenance. Since he has no property in food which ought not to be eaten, that can be no loss of maintenance. It therefore appears, that relinquishment of maintenance consists in relinquishing food to which he has a right.

Since a slave has no wealth exclusively his own (LI and LII), is it not impossible for him to repay what he has consumed? Although this objection may be made under the opinion in which it is contended that slaves are incapable of property, yet the slave's ownership of wealth given through affection, like that of women over female property, must be universally acknowledged.

Others hold, that the text of YĀJNYAWALKYA (XLIV) does not relate to one maintained in a famine, because the gift of a pair of oxen is not mentioned; but relates to one maintained in consideration of service, for it accords with a text of NĀREDA (XLVIII); and in that text the word "immediately" shows his emancipation on the very day when he desires his release from servitude. (It should not be objected, that the word "immediately," signifying that day, denotes his enfranchisement on the very day when he relinquishes maintenance, *with, or without, demanding his discharge*. That word would be superfluous, since the same sense might be obtained without it: *and it must therefore signify the day when he claims his release*.) In the present instance, some consideration, such as the gift of a pair of oxen, is required for emancipation from servitude. Even though one maintained in a famine were not distinguished from one maintained in consideration of service, still, being distinguished from a servant for a period depending on agreement, he must give a pair of oxen besides relinquishing his maintenance. By the word "relinquishing" (XLIV) is here meant not accepting it.

Since one maintained in a famine is similar to this servant, the exposition delivered by CHANDESWARA on the words "for what was consumed, &c." (XLIII) should be admitted in this case. Nor should it be objected, that it appears, from the word liquidate in the following text, that both must repay what they have consumed.

XLIV.

Yógi-YAJNYAWALCYA :—He who saves his master's life, *is released from servitude ; and so are some slaves on relinquishing subsistence, and others on liquidating that debt for which they became slaves.*

Saving his master's life, and payment of debt, are distinct from the direction for a pair of oxen to be given by one maintained in a famine. However, there is no difficulty, *say these lawyers,* in explaining "liquidate" as signifying that he is emancipated by the gift of a pair of oxen, and by liquidating what he consumed during the season of scarcity.

XLV.

NÁREDA :—One pledged *is also released*, when his master redeems him by discharging the debt ; but, *if the creditor take him in payment of his demand,* he becomes a purchased slave.

When the master whose slave he is, or his *own* father, redeems him, or when he redeems himself, then a slave pledged is also released : but if he to whom the slave is pledged take him, he is afterwards a purchased slave ; that is, he remains as one bought. So the *Retnâcara*. He becomes a purchased slave, because he is sold by his master for a price *paid in the remission of the debt* : and he who sells himself, is in effect bought. Hence these two cannot be released from slavery, unless by the favour of the master, or by saving his life.

XLVI.

NÁREDA :—Paying the debt with interest, a debtor is released from servitude ; and a slave for a fixed period is also emancipated by fulfilling the stipulated term.

Repaying, with interest, so much as had been paid, through his master, to a creditor, and for which he consented to become a slave. Hence it appears, according to some lawyers, that interest must be again paid; else, "with interest" would be unmeaning. But that is wrong; for, were it so, a man who has undertaken servitude to discharge his own debt with interest, must again pay interest to his master. Therefore, he who has undertaken servitude to discharge a debt, must pay the principal and interest, if interest have not been *already* received: but in the case of one redeemed from a debt due to another, the man is absolutely a purchased slave; or he may be released from servitude, on payment of the same principal and interest which had been paid *to the creditor*.

"On liquidating that *debt*" (XLIV) is thus explained in the *Mitâcsharâ*; the *slave* is released on liquidating, that is, on repaying with interest, the amount received by his master who pledged him, or the amount paid by the *present* creditor to redeem him from a *former* creditor. Another interpretation has been already mentioned: but this exposition agrees with the *Mitâcsharâ*.

"By fulfilling the stipulated term" (XLVI): this is the mode of emancipation for him who is called a slave for a stipulated time. This interpretation is given by authors. This slave for a stipulated time is a distinct sort of slave offering himself in this form, "I am thine;" the emancipation of one who so gave himself having been completely declared, the emancipation of a slave for a stipulated time has been already delivered. Thus other lawyers expound the text. But others again hold, that the emancipation of him who is called a slave for a stipulated time, is comprehended under the following text (XLVII). "Stipulated;" a stipulated term, or a definite period: this interpretation, already noticed, should be remembered.

XLVII.

NĀREDA:—One who offered himself in this form, "I am thine," one made captive in war, and a slave won in a stake, are emancipated on giving a substitute equally capable of labour.

It

It is the opinion of other lawyers, that one who offered himself in that form is distinct from the slave for a definite period.

“On giving a substitute;” on giving a slave equal to himself.

The *Retnâcara*.

Another slave equally capable of labour.

MISRA.

XLVIII.

NÁREDA:—One maintained in consideration of service is immediately released on relinquishing his subsistence, and a slave for the sake of his bride is emancipated by divorcing his wife.

He who is servant for the sake of subsistence is emancipated by relinquishing it. So MISRA. But we cannot ascertain why servant is mentioned under the title of Emancipation from slavery, for it would be proper to say, he who is a slave for the sake of subsistence, &c.

“By divorcing his wife;” by separating *himself* from her.

“His wife;” the female slave. The *Retnâcara*.

According to the *Mitâcsharâ*, the sense is, ‘because it is forbidden to cohabit with a slave.’

“His wife;” the female slave. After divorcing or forsaking her, the obligation to serve her master ceases.

The *Vivâda Chintâmeni*.

XLIX.

CÁTYÁYANA:—If a man approach his own female slave, and she bear him a son, she must, in consideration of her progeny, be enfranchised with her child.

“Her progeny;” the son born of her. On his account she must be enfranchised with her issue; that is, with her son: and this rule is applicable if her master have no legitimate or adopted son; for in that case she need not be enfranchised. This construction

struction agrees with the *Pracāśa*, *Pārijāta*, and *Retnācara*; and MISRA holds the same opinion.

NAREDA declares the form of manumission:

L.

NAREDA:—Let the benevolent man, who desires to emancipate his own slave, take a vessel of water from his shoulder, and instantly break it;

2. Sprinkling his head with water containing rice and flowers, and thrice calling him free, *let the master* dismiss him with his face towards the east:

3. Thenceforward let him be called “one cherished by his master’s favour:” his food may be eaten, and his favours accepted; and he is respected by worthy men.

“Benevolent;” affectionate, or satisfied. It comprehends a person emancipating the slave who has preserved his life, or the like; for no other form of manumission has been ordained. Or the manumission of a slave, who has preserved his master’s life, should be performed by the master with affection and benevolence.

“Take a vessel of water from his shoulder, and instantly break it;” by this is figured the discontinuance of his office of carrying water. From the cessation of that duty, it appears, under the authority of the text, that all servile duties are discontinued. The sprinkling of water with flowers and rice is auspicious, and is ordained as a part of the ceremony of manumission. “Thrice declaring him free” is intended to confirm his emancipation. Dismissal with his face towards the east is auspicious, and is ordained, *but as an unessential* part of the ceremony. Thenceforward he shall be called by the appellation of “*freedman, or one cherished by his master’s favour.*” The *Retnācara*.

Others state this meaning: his appellation formerly was, “the slave of this man;” but now he should be called, “cherished by this man’s favour.”

“His food may be eaten:” it appears from the text, that, if a man

man of the commercial class happen to be the slave of a *Cshatriya*, his food should not be shared by other men of the commercial class; but, after manumission, it may be shared by them, and so in other cases. "And his favours accepted:" it appears that favours should not be conferred by such a *Vaisya* before manumission; but now, after manumission, they may be accepted. Some lawyers hold, that his favours could not be received, because he was incapable of property; but now, since he may possess property, being free, his favours may be accepted.

LI.

NĀREDA :—These three persons, a wife, a slave, and a son, have, *in general*, no wealth exclusively their own: the wealth, which they may gain, is *regularly* acquired for the man to whom they belong.

LII.

MENU :—Three persons, a wife, a son, and a slave, are declared by law to have, *in general*, no wealth exclusively their own: the wealth, which they may earn, is *regularly* acquired for the man to whom they belong*.

2. A *Brāhmana* may seize without hesitation, *if he be distressed for a subsistence*, the goods of his *Súdra* slave: for, as that slave can have no property, his master may take his goods.

"Earn;" acquire.

The *Retnâcara*.

The sense is, 'doing acts whence property may be obtained.' Such acts are the labours of husbandry and the like. But CUL-
LÚCABHATTA says, this merely illustrates the dependence of a wife and the rest, in respect of property acquired by themselves; for it will be mentioned, that a wife has exclusive property of six kinds;

* Already cited in Book II, Chap. IV, v. LVI.

kinds ; and a wife being qualified for acts in which property must be used, a woman, with *the* assent of her husband, may even use wealth common to them both. VIJNYÁNÉSWARA holds the same opinion ; and so do JÍMUTÁVÁHANA and others. But it does not appear to be admitted by CHANDÉSWARA, VÁCHESPATI MISRA, and others ; for they otherwise explain these, and the texts which will be cited. The mode of reconciling the difficulties suggested by CULLÚCABHATTA will be delivered in its place.

The sense of the second verse (LII 2), according to CULLÚCABHATTA, is, that a *Bráhmāna* master, without hesitation, with confidence, without apprehension of punishment from the king, may take the goods of his slave if he be distressed : the Sage subjoins a *lax* complimentary phrase ; whatever belongs to his slave, belongs to the master ; the slave, though he be the owner of the goods, has not exclusive dominion over them. Therefore, under the authority of the text, the master, though he forcibly seize goods belonging to another, (*that is, belonging to his slave,*) shall not be amerced.

But, according to the opinion, in which it is maintained that a slave is absolutely incapable of property, “without hesitation” is explained ‘with confidence :’ in this case, any *Bráhmāna* whosoever can only receive from a *Súdra* slave effects ascertained not to belong to his master ; but *he must not accept* goods which are not *so* ascertained : the Sage declares it an offence to accept them without such an ascertainment, “he can have no property, &c :” thus, if he receive the goods of a stranger from *the hands of* a different person, the validity of the gift may be questioned.

LIII.

DÉVALA, *cited* in the *Retnácara* and *Chintámeni* :

—After the death of the father, sons may divide his estate ; but they have no ownership, or *full dominion*, while a faultless father lives*.

2. MENU has declared, that, like them, women have
no

* Cited again in Book V, v. 5.

no dominion over any thing, while their husbands live; nor slaves, while their master survives.

It appears from the expression, "like them," that the want of dominion of a son whose father is living, over the paternal estate of a wife while her husband survives, and of a slave during the life of his master, are similar. What is this want of dominion? Since it is intimated by the two conditions, (while the husband lives, and while the master exists,) that both have *dominion or ownership after the death of the husband and master*, even at that time dominion, or ownership, subsists, but is in fact a mere entity. In expounding the text of NĀREDA (Book II, Chapter IV, v. LIII 2), persons not their own masters are explained by authors, 'sons, slaves, and the like.' But want of dominion is an absolute want of independence. Accordingly that term is used instead of the word dependence: and slaves and the rest cannot, at that time, give away their own acquired property.

It should not be argued, that this text relates to wealth acquired by the master of the slave, or by the husband of the wife. The exception could not be pertinent, unless their dominion or ownership might have been supposed; for an exception implies a prior general rule. Since the independence of a son might be supposed, because he has ownership of his father's wealth (Book V, Chap. I, Sect. I, Art. I), the text is propounded for the purpose of denying that independence. Thus some expound the law.

"Over any thing;" since independence in regard to female property will be deduced from particular texts, and from the reason of the law, this dependence regards all things except that. The wife's and the slave's want of property above mentioned (LII) is a privation different from that of female property and the like; or it may be understood as dependence in regard to property different therefrom. Wives and the rest may accomplish rites for which money is required, by using female property and the like.

LIV.

CÁTYÁYANA :—Whatever goods belong to a slave, his master is declared by law to have dominion over them ; but that master has no right to the goods which are acquired by publick sale.

This reading (*pracāśa-vicreyāt*, or publick sale,) occurs in some places of the *Retnācara* : but in the *Chintāmeni* the reading is, through favour or by sale (*prasāda vicreyāt*) ; and this may be well expounded. What is sold, through favour, by the master to the slave ; or what is obtained by the slave from his master, by sale, (that is, by purchase,) or obtained by him from his master through favour, belongs to the slave, not to his owner. So the *Retnācara*. **MISRA** expounds it: what is obtained by the slave from his master's favour, or by sale from him, belongs to that slave ; his master has no right to it. As women are independent in regard to female property, so are slaves also in regard to property acquired by favour. It appears from the literal sense of the text, that slaves are independent in regard to what has been given through favour by the master, or by another person. But **MISRA** and the rest say, by the master's favour.

The *Pracāśa* and *Pārijāta* concur in reading *na swāmi dhanam arhati*, the master has no right to the goods. **LACSHMÍDHARA** reads *tat swāmi dhanam arhati*, their master or owner has a right to the goods. According to that reading, "their owner" is meant of the slave. So the *Retnācara*.

LV.

CÁTYÁYANA :—A free woman, or one who is not a slave of the same master (for the word *adāsí* may bear either sense *), becoming the bride of a slave, also

* *Adāsí* :] the gloss hardly notices the more obvious interpretation of free woman : without a reference to the *Vivāda Chandra*, I should not have discovered that both interpretations are intended by the commentators cited on this text.

also becomes a slave *to her husband's owner*; for her husband is her lord, and that lord is subject to a master.

Literally, “not a female slave;” that is, not mancipated to the master of him whose bride she becomes: for this *interpretation* is necessary from the connection implied in the word slave; and, a master of the male slave being supposed, it is proper to interpret the text, not mancipated to him. The expression “she becomes a slave,” also implies the same connection. In this exposition, the *Vivāda Retnācara* and *Vivāda Chintāmeni* concur: and the female slave of another, or a free woman not the slave of any man, becoming the bride of a mancipated servant, is enslaved to his master. In that case the female slave of another becomes enslaved to the master of the male slave, with the assent of her former master.

“Not a female slave:” if the negation show one different from a female slave generally, (*that is, a free woman,*) and if it be said that she who is the slave of any other person is not different from a female slave generally, (*that is, she is not a free woman,*) still there may be a general difference from slavery, because she is released from servitude by *her master's consent to her marriage*. In effect there is no difference *between these expositions*. Such is the opinion intimated in the *Retnācara*.

But MISRA writes, that her marriage is in fact a cause of emancipation from servitude to her former master. Hence this text belongs to that title (*the title of Emancipation*); and proves the *second* servitude to be formed with the consent of her master. In the case of her marriage without his consent, as in the marriage of a *chēṭicā*, or female attendant, the former master's property is not lost.

ART. II.—On Persons liable to Slavery.

LVI.

NĀREDA:—In the inverse order of the classes, slavery

is not legal, excepting *the case of one who forsakes his duty: in this respect*, the condition of a slave is held similar to *that of a wife*.

“In the inverse order:” thus a *Vaisya* cannot be the slave of a *Súdra*; nor a *Cshatriya*, of a *Vaisya*; and so forth. An illustration is given; “similar to *the condition of a wife*,” as a woman of the commercial class cannot be the wife of a *Súdra*, nor a woman of the military class be the wife of a *Vaisya*; so in this case also. “Excepting one who forsakes his duty:” by this it is expressed, that one who forsakes the duty of his own order, may become a slave even in the inverse gradation of classes. Such is the opinion of MISRA and CHANDÉSWARA. Consequently, an apostate *Vaisya* may voluntarily become the slave of a *Súdra*, and so forth; but if he do not agree to become the slave of any person in particular, the king shall make him his own slave, as already mentioned.

On this point an observation should be made: the servitude of him alone who forsakes the *professed* duty of his “order,” is expressly allowed in the inverse gradation of classes; is the servitude even of others than a *Bráhmāna*, who forsake the duty of their “class,” illegal in the inverse gradation? for, how can the expression, “except one who forsakes his duty,” bear both senses?

LVII.

CÁTYÁYANA: — BHRĪGU admits the servitude of one who, being his own master, gives himself, as *the marriage of a wife self-given is acknowledged*: slavery should be limited to three classes; never can a *Bráhmāna* become a slave.

2. *The servitude of men of the military, commercial and servile classes, who have forfeited their independence, may be in the direct, not in the inverse order of the classes.*

3. But even a man of equal class must not reduce a *Bráhmāna*

Bráhmāna to slavery; yet a mild and learned man may employ in labour one inferior to himself in those qualities.

4. Still let not the highest twice-born man perform impure work; for the glory of a king is obliterated by the slavery of a *Bráhmāna*.
5. The law permits the servitude of men of the military, commercial, and servile classes, to one of an equal class, on some accounts; but on no account let a man compel a *Bráhmāna* to perform servile acts.

“Never a *Bráhmāna*” (LVII 1): the slavery of a *Bráhmāna* is universally forbidden: “as in the case of a wife.” He elucidates the precept: “in the direct order of the classes, &c.” Men of the military and other tribes, accidentally forfeiting their freedom and independence, *may become slaves* in the direct order of the classes. This construction is suggested by preceding terms. Though the servitude of a *Bráhmāna* be universally prohibited, he repeats the prohibition for the sake of particular explanation; “but even a man of equal class, &c.” Or the servitude of other classes, in the direct order, is declared; as there is no class superior to a *Bráhmāna*, his servitude to a man of an equal class might be supposed: the Sage obviates that doubt. “But even a man of equal class, &c.” (LVII 3); by this it is implied, that the servitude of *Cshatriyas* and the rest, to men of equal class, is permitted. He subjoins a particular rule in respect of a *Bráhmāna*: “a mild and learned man, &c. ;” such a man, reducing to servitude a *Bráhmāna* inferior in respect of virtue and learning, may not compel him to perform impure work, such as removing urine or ordure; but he may employ him in pure work, such as sweeping a temple or the like. But the king should never reduce a *Bráhmāna* to slavery: the Sage therefore says, the king’s glory would be obliterated. Or the expression is general; his glory would be lost, even if a *Bráhmāna* be enslaved by others. This intimates disgrace. Hence the servitude even of a willing *Bráhmāna* should not be permitted; for the king himself would suffer thereby.

By forbidding the servitude of a *Bráhmāna*, no objection is implied to his serving as an agent in collecting the revenue of a village or the like. It should not be said, that even the office of an agent, being service, is forbidden, because MENU ordains, "never let him (*a Bráhmāna*) subsist by *Swavṛitti* *;" and he himself explains it, "Service is named *Swavṛitti*, or *dogliving*, and of course he (*a Bráhmāna*) must by all means avoid it †;" which is expounded by the learned, service or acts producing gratification only, *not religious merit*. From the declaration contained in the following text, that a *priest becoming the king's servant* is not a true *Bráhmāna*, (or, which is the same thing, that the priest offends,) no fault on the part of his master is established.

SÁTÁTAPA :—Those untrue *Bráhmānas* are declared by holy Sages, acquainted with the principles of things, to be of six *śórts*: the first of them is a servant of the king; the second, a buyer and seller.

Some hold, that a *Bráhmāna* may, with his own consent, be employed as a commissioned servant; but not without his consent, for the appropriate fine would be thereby incurred.

"The law permits &c." (LV 5): equal class there comprehends equal qualities. Thus a *Cshatriya*, a *Vaisya*, and a *Sūdra* may be employed as slaves by men of equal class, even though these be only equal in virtue: such is the law in respect of those classes. But a *Bráhmāna* can never be the slave of one merely equal in virtue.

The *Párijāta* and HELÁYUDHA.

A *Bráhmāna*, who follows the duties of the military, commercial, or servile class, bearing arms, practising husbandry, commerce and the like, or performing service, can never employ a *Bráhmāna* in a servile duty.

LACSHMÍDHARA.

But CHANDÉSWARA assents to both constructions.

"Their several duties" (XXXVII 1) are explained in the *Retnâcara*, the duties ordained for the military and commercial classes. They are maintained in consideration of such work. But, if a *Bráhmāna* cause them to perform servile acts, the same

legislator

* MENU, Chap. IV, V. 4.

† Ibid. V. 6.

legislator declares a penalty (XXXVII 2). A *Bráhmāna*, who, by his power, shall cause twice-born men, girt with the sacrificial thread, (or virtuous and learned,) to perform servile acts without their consent, shall be fined by the king six hundred *panas*. This is the sense according to the *Retnācāra*. By "twice-born men" are meant the *Bráhmāna*, *Cshatriya*, and *Vaisya*. But, with their consent, there is no objection to the performance of servile acts by men of the military and commercial classes.

But a man of the servile class, whether bought or unbought, he may compel to perform servile duty (XXXIII): whether bought or unbought, he may compel him to perform impure work. The *Retnācāra*.

LVIII.

VISHNU:—He who employs a man of the most elevated class in servile duty, shall be fined in the highest amercement.

"A man of the most elevated class" is explained, in the *Chintāmeni*, a man of the sacerdotal tribe. Others think there is no difficulty in assigning such a punishment to the man who employs, in servile duty, one of a higher class than his own.

In the case of one who is not his own master, dominion and servitude occur in the inverse order of the classes; as in the story of HERISCHANDRE, recorded in the *Mārcandēya-purāna*: accordingly the term "his own master" is used by CĀTYĀYANA and others, when prohibiting servitude in the inverse order of the classes.

CHANDÉSWARA.

It should be considered, that the expression "his own master" is thus used in the text of CĀTYĀYANA (LVII); "one who, being his own master, gives himself." The servitude of one who is not his own master, in the inverse order of the classes, may be thus understood; when a *Cshatriya* delivers his own *Vaisya* slave to be the mancipated servant of a *Sudra*, then one who is not his own master becomes a slave in the inverse order of the classes.

LIX.

CĀTYĀYANA:—He who seizes a woman of the sacerdotal class, he who sells her, and he who enslaves a woman of family, impelled by lust, 2. Or causes her to be approached by another, shall be amerced; and that *enslavement* is null.

There is a slight difference in the reading according to the *Retnācara* and *Chintāmeni**. “Impelled by lust” is explained in the *Retnācara*, with her own consent, through desire. Both authors explain the text; “he who enslaves a woman of family voluntarily offering herself, or who delivers her to another, shall be fined.” Authors have not exhibited the *other* interpretation; “he who enslaves a woman of family impelled by lust, (*that is, unable to resist the impulse of desire, and therefore yielding her person,*) shall be fined.” Nor is it noticed, that this is inconsistent with AMERA’S interpretation of a woman of family, ‘a woman who preserves *the honour of her family.*’

“And that is null” (LIX 2): that enslavement is null and void. Thus it is incidentally mentioned, that she is of course released from slavery.

LX.

CĀTYĀYANA:—The man who treats as a slave the nurse of an infant child, or a free woman, or the wife of his dependent, incurs the first amercement;

2. And he who attempts to sell an obedient female slave, though she resist the sale, and though he be not distressed, but able to subsist, shall pay a fine of two hundred *panas*.

“The

* In the first, the text is read *Cāmāt tu sans'ritām*; in the other, *Cāmāt sans'rijatim*. This variation does not affect the sense.

“The nurse of an infant child,” who nourishes that infant at her breast. “A free woman,” intrusted to him, or who has become a servant for maintenance. “His dependent;” his servant. “Though she resist;” though she say, “I ought not to be sold.”

The *Retnâcara*.

It appears that the nurse of an infant, though she be a slave, should not be so treated: for “free woman,” *subsequently mentioned*, denotes an independent woman. VÁCHESPATI MISRA clearly explains it: “the nurse of an infant,” though she be a slave; that is, one who gives her breast to an infant: “a free woman;” one who serves for subsistence and the like: if they do not consent to be sold, the *seller incurs* the first amercement, or a fine of two hundred and fifty *panas*.

“An obedient female slave” (LX 2); from this it appears that there is no objection to the sale of one whose conduct is vicious. It also appears, from the term “though he be not distressed,” that there is no objection to the sale, if he be distressed for subsistence; and from the expression “able to subsist,” that there is no objection to the sale, if he be unable to subsist otherwise, though the season be not calamitous.

SECT. III.—On *Wages and Hire*.

LXI.

NĀREDA:—The rule and the act of payment, and nonpayment, of the wages or hire of servants, are *now* declared, called in law Nonpayment of wages or hire.

The title of law, called Breach of promised obedience, has been already propounded; that which is called Nonpayment of wages or hire, is now delivered. Considering breach of promised obedience as a branch of nonpayment of wages, MENU has not

separately propounded it; or breach of promised obedience falls under the miscellaneous or supplementary title.

The rule and act of payment and nonpayment both *constitute the title of* Nonpayment of wages or hire. The rule of payment, ("wages or hire should be paid;") and the act of payment: the rule of nonpayment, ("wages or hire should not be paid;") and the act of withholding payment: *these are comprehended in non-payment of wages or hire.*

VIJNYÁNÉSWARA reads, "the consecutive rule of payment and nonpayment of wages to servants is declared;" and he expounds it, the consecutive rule of payment, and consecutive rule of nonpayment, will be delivered in the following verses, under *the title of* Nonpayment of wages or hire.

LXII.

NĀREDA:— Let the master, for whom work is performed, pay wages to the servant, according to their agreement, at the beginning, the middle, or end of his labours, as may be settled between them:

2. Wages not being stipulated, let the factor, the herdsman, and the servant in husbandry, *respectively*, receive a tenth part of the profit on goods fold, of the milk, and of the grain.

"The master for whom work is performed;" *literally*, the master of the work. According to their agreement; as was stipulated. At the beginning, the middle, or end of the labour.

The *Retnācara*.

Consequently the meaning is, at the beginning, the middle, or end of the labour, as was settled between them; the wages shall be paid at the period agreed on. But if none were settled, any one of those periods may be the term of payment: and if the wages be not paid even at the third period, application should be made to the king.

Others hold, that payment should be made by him who shares *the produce of labour*, at the beginning, the middle, or the end of it.

it. According to their opinion it is intimated, that, if payment be not made at those periods respectively, by them who share the produce of labour, recourse to the king is allowed, and so forth.

Succeſſively, five parts at the commencement, ſeven at the middle, and twenty-eight at the end of the labour.

The *Párijāta*.

According to this opinion, dividing the whole of the wages agreed for, into forty parts, he ſhould pay five at the commencement of the labour, and ſo forth. Whence the author has deduced a diviſion into forty parts, and the ſucceſſive payment of five parts &c. ſhould be inquired. At preſent, an agreement for paying wages at the end of the month is very cuſtomary.

“Milk;” *literally*, the feed of cows (LXII 2): *meaning* the beſt produce of kine, *which is* milk.

The *Retnācara*.

LXIII.

YÁJNYAWALCYA:—He who cauſes work to be performed without fixing the wages, ſhall be compelled by the king to give a tenth part of the *profit ariſing from* commerce, cattle, or grain.

The maſter who cauſes work to be performed in commerce, attendance on cattle, or agriculture, without fixing the wages of his ſervant, ſhall be compelled by the king to pay him a tenth part of the *profit ariſing* therefrom.

The *Retnācara*.

VIJNYÁNÉSWARA gives the ſame *exposition*.

LXIV.

YÁJNYAWALCYA:—The will of the maſter *determines the wages* of him who tranſgreſſes time and place, and of him who does the work *otherwise than was ſtipulated*: but more ſhall be paid if more be done.

A ſervant who works at a different time and place from that which is proper, or *otherwise than was agreed*, by doing leſs or the like, receives wages at the will and pleaſure of his maſter:

but if he do more work on his master's requisition, he receives greater wages. The *Retnâcara*.

The second verse is cited by VIJNYÂNÉSWARA, with this observation: "the Sage speaks of one who does not act according to *his master's* orders." VIJNYÂNÉSWARA's meaning is this: though he see a proper time and place for the sale of the commodity, if *the factor*, through insolence or the like, do not sell it; or if he accept less profit, thinking that the time and place would cause him much trouble; let the master pay him what wages he pleases, not the full hire. Again; if he obtain greater profit by his own selection of time and place, a greater reward than was previously stipulated shall be given by the master to the servant.

When greater profit is obtained by his own selection of time and place, (that is, by his own exertion,) then only a greater reward shall be given; not if the greater profit were caused by *circumstances of time and place, without any exertions on his part*. For, were it so, less wages being paid to one who obtained less profit, and greater wages to one who obtained ample profit, the *direction for* receiving the full hire would be absurd: and the master is entitled to the greater profit obtained on his goods at the proper season.

Others explain time and place in this manner: a servant receives wages determined by the will of his master, if he deviate from the time or place thus prescribed: "build a wall in the month of *Cârticî*;" or, "construct a boat on the shore of the Ganges."

LXV.

YÁJNYAWALCYA:—According to the work performed by a servant, though the whole task imposed might be too much for both *master and servant together*, must wages be given; if either of them could have performed it, *and it be performed*, let the promised reward be paid.

This text is intended for a rule in the case of a servant whose work and hire are thus stipulated: "ten pieces of money shall be received for building this wall." By the expression "even
by

by both," is also implied "by many:" if it could not be performed by any one, *or* if the work be not completed by reason of sickness or the like, then wages must be given in proportion to the work done, as determined by arbitrators: in proportion to the work which each servant has performed, let the master pay him wages. Neither shall the ten pieces of money be paid, as had been promised; nor shall payment be withheld for the work partially done. If the work can be performed; if it be performed by both, or by many servants, the promised or stipulated recompense shall be paid, and divided amongst them. Neither shall the whole reward promised be paid to each; nor shall each be paid in proportion to his work. Such is the opinion of VIJNYÁNÉSWARA.

Here 'wages in proportion to his work' do not signify in proportion to the part of the work *done* and to the *whole* wages; but a recompense to be paid according to the number of days: for VIJNYÁNÉSWARA, in the latter part *of his gloss*, means daily hire, by the term 'in proportion to work.'

Though the whole task (which could only be performed by many persons) could not be accomplished by both *master and servant together*, wages must be given in proportion to the work done; but if it could have been performed by both master or servant together, or by either of them, in that case the fine prescribed must be paid. Such is the sense of the text, and that *fine* will be declared in its place. The *Retnācara*.

The meaning of the gloss is, if one or two persons erroneously undertake to perform, on stipulated wages, a task which could *only* be performed by many, the servant shall certainly receive the proper hire of his labour, though the work be not completed. But, if it could have been accomplished by the master or servant, then, should it remain unperformed in consequence of neglect or the like, the servant shall pay the fine prescribed.

Both interpretations may be admitted. In the *Pārijāta* the text is expounded, "if the task require the labour of both *master and servant*, the servant shall receive wages in proportion to the work performed by him; if the task could be performed *by the servant alone*, and it be performed, let the promised reward be paid." This interpretation of both parts *of the text* is omitted by the other two commentators.

LXVI.

VRĪHASPATI:—Let the man who guides the ploughshare have a third or a fifth part of the grain, if no special agreement be made.

The disjunctive “or” separates two cases declared in the following text:

LXVII.

VRĪHASPATI:—Let the ploughman, to whom food and vesture are given, take a fifth; and let him who is supported by the profit alone, receive a third part of the grain produced.

“Supported by profit;” by the fruit of labour, by the grain produced, and the like: meaning him who has no such allowance of food and vesture.

A tenth part, as directed by NÁREDA (LXII 2), is assigned to a servant different from the ploughman. The *Retnácara*.

In this exposition the *Chintāmeni* concurs. The meaning is this: the hire mentioned is allowed to a servant employed in cutting grass preparatory to tillage. Or the text of NÁREDA may relate to pulse and the like, which require sowing and watching only, not tillage.

LXVIII.

ĀPASTAMBA:—A servant in tillage, who abandons his work, shall be beaten with a staff; so shall a herdsman who neglects his duty, and his own cattle shall be seized.

A servant in tillage, or ploughman, who abandons his work, or absconds, shall be beaten with a staff. So shall a negligent herdsman; and moreover, the herdsman's cattle shall be seized.

The *Chintāmeni* and *Retnácara*.

LXIX.

LXIX.

Vṛiddha MENU:—*The wages of seamen shall be such as are usually given by men who understand sea voyages, and who know countries, and seasons, and commodities; unless there be a special agreement.*

“Men who understand sea voyages;” meaning generally persons well acquainted with commercial affairs. The *Retnācara*.

The *Chintāmeni*, in fact, gives a similar exposition. It is consequently the author’s opinion, as some lawyers remark, that this, with the tenth part of the profit directed by NÁREDA and YAJNYAWALCYA (LXII 2, and LXIII), constitutes an alternative.

But others hold, that this text concerns the wages of seamen, because it mentions sea voyages. In other cases, the wages shall be a tenth part of the profit; but the wages of seamen shall be the same which are *usually* given, by merchants trafficking by sea, to their servants; or if the wages have been previously settled, they shall be paid *accordingly*. By the restriction of “men who know countries, seasons and commodities,” it is implied, that wages determined by any person whose intellect is disturbed shall not be paid.

LXX.

NÁREDA:—*The implements of work, and whatever is intrusted to servants for their master’s business, should be diligently preserved; not wickedly neglected by any means.*

“Implements of work” (the tie of the yoke and other implements of husbandry), and “what is committed to servants for their master’s business” (such as grain and the like for agriculture), should be diligently kept by the servants, not wickedly or knavishly neglected. The *Retnācara*.

“Agricul-

“Agriculture,” in this gloss, signifies ‘husbandry and the like:’ for NÁREDA has premised the factor, the herdsman, and the servant in husbandry (LXII 2).

“The implements of work:” the tie of the yoke and the like, which are necessary or useful in work, and which are intrusted *to the servants* for the business proposed, (be it agriculture or any other occupation,) must be diligently kept by the servants. If they be destroyed even by the act of God, *but* in consequence of the servant’s neglect, it is a fault on the part of that servant. This inference seems just.

LXXI.

VRĪHASPATI:—If the servant do not perform any part of his master’s business, he forfeits his wages; and may afterwards be sued *for a fine*:

2. And if a servant, having received his wages, perform not his work, though able to do it, he shall pay twice the amount as a fine *to the king*; and *the full amount of those wages to his master*.

If a servant able to perform his task, having undertaken to execute work required by his master, do not perform any part of it, (that is, not the smallest part of it,) in that case he forfeits his wages. He loses the amount of the wages verbally promised. Does it mean, “he shall pay that amount;” since this corresponds with the text of YÁJNYAWALCYA (LXXII)? No; for that is signified by the expression “and may afterwards be sued;” *literally*, a contest subsists. By “contest” is meant a law-suit: and by saying that a law-suit afterwards subsists, a fine is intimated; and that fine should be deduced from the text of YÁJNYAWALCYA (LXXII.)

“And if a servant, &c.” (LXXI 2): since he has actually received wages, he shall pay twice the amount as a fine to the king, and their full amount to his master.

LXXII.

YÁJNYAWALCYA:—A servant who desists from
working

working after he has received his wages shall pay twice their amount, and their full amount *only* if he have not received them: the implements of husbandry must be diligently kept by the servants.

He shall pay twice the amount of those wages, *in the first case*; and their full amount, (not more than was agreed; not twice their amount;) *in the second*. Therefore twice the amount *of the wages* shall be paid by him who begins the work, and then desists from it after receiving his wages; and the full amount *only* if he have not received them.

“The implements of husbandry,” *namely*, the spade, the ploughshare, or the like, must be diligently kept or preserved by the servants, that is, by the ploughmen and the rest.

The *Retnâcara*.

The payment of the full amount, or of twice the amount of his wages, should be understood as a fine to the king. “The implements must be diligently kept,” as also directed by NÁREDA (LXX); this should be understood of a servant employed in labour.

VIJNYÁNÉŚWARA, after stating this exposition, proposes another construction of the last hemistich, in this manner: “or he shall be forcibly compelled to perform his work, after paying him the wages promised;” as directed by the following text of NÁREDA:

LXXIII.

NÁREDA:—A servant who refuses to perform the work he has undertaken, shall be compelled to fulfil his agreement, first paying him his wages; but, if he persist in his refusal after receiving his wages, he shall forfeit twice their amount.

LXXIV.

CÁTYÁYANA:—He who begins, but does not perform,

form, his task, shall by force be compelled to finish it; if he refuse to do so, he incurs an amercement.

LXXV.

VRĪHASPATI:—He who has promised to perform work, and does it not, shall be compelled even by forcible means; and if he *still* refuse to complete it, he shall be fined two hundred *panas* of copper.

This promise, or agreement, from the correspondence of the text of CĀTYĀYANA (LXXIV), extends to the commencement of the work.

The *Retnācara*.

The texts must be distributed to different cases, for the purpose of reconciling the *seeming* contradiction between this fine of two hundred *panas*, and the fine of eight *crīṣṇālas* or *raṭṭicās*, directed in a text which will be quoted from MENU (LXXVI): and their inconsistency with the text of YĀJNYAWALKYA, which directs a fine equal to the amount of the wages (LXXII), must also be explained.

For this purpose, some hold, that, if a man, not having received his wages, go elsewhere through avarice, he shall be fined their full amount; if, through indolence, he do not perform the work, two hundred *panas*; but if he do not begin the work, eight *crīṣṇālas* or *raṭṭicās*. Others think, he shall be made to pay the full amount, in the case of wages *settled* by contract; and the fine is two hundred *panas* and the like, in the case of wages by the month or the like. Others again affirm, that twice the amount of the hire is paid to the master, and two hundred *panas* to the king: and in like manner, the full amount of the wages, twice their amount, the seventh part and so forth (LXXXVII) are payable to the master; and the two hundred *panas*, and other fines, to the king.

If it be said, that in a text above quoted (LXXI) a forfeiture of wages is ordained, which is inconsistent with the direction for compelling the servant *to perform the work* (LXXV); it is reconciled from the rule propounded by CĀTYĀYANA (LXXIV):
paying

paying his wages, he may by force compel him; but if he *still* refuse to perform it, he incurs the forfeiture of his wages, and an amercement.

LXXVI.

MENU:—That hired servant, or workman, who, not from any disorder, but from insolence, fails to perform his work according to his agreement, shall be fined eight *crīṣhnalas* or *raṭṭicās* of gold, and his wages or hire shall not be paid.

“Not from any disorder;” not from the act of God or of the king, by which he might be disabled from performing it.

The *Retnācara*.

LXXVII.

MENU explains *crīṣhnala*:—The very small mote, which may be discerned in a sunbeam passing through a lattice, is the least visible quantity, and men call it a *trasarēnu*:

2. Eight of those *trasarēnus* are supposed equal in weight to one minute poppy-feed; three of those feeds are equal to one black-mustard seed; and three of those last, to a white-mustard seed:
3. Six white-mustard feeds are equal to a middle-sized barley-corn; three such barley-corns to one *crīṣhnala*; five *crīṣhnalas*, or *raṭṭicās* of gold, are one *māśha*; and sixteen such *māśhas*, one *suverna*.

The whole meaning is, that a *crīṣhnala* is a quantity of gold weighing one *raṭṭicā*, or seed of the *gunjā**.

CULLÚCABHATTA says, servants shall be fined eight *crīṣhnalas* or *raṭṭicās* of gold, and the like, according to the work. By the term “and the like” must be understood *raṭṭicās* of silver, copper,

* The *abrus* of Botanists.

per, or other *metals*. He thinks the denominations, as far as *crishnala*, are common to all metals; and the name of *suverna* only peculiar to gold.

The same legislator declares the rule, when a servant, from disease, not from insolence, fails in performing the work.

LXXVIII.

MENU:—Yet, whether he be sick or well, if the work stipulated be not performed *by himself, or by another for him*, his whole wages are forfeited, though the work want but a little of being complete.

If he do not perform it himself, or by means of another. “Though it want but a little;” though a trifle only be unfinished. The *Retnâcara*.

Having abandoned his work on account of sickness, if he do not complete it when recovered, no wages shall be paid for the work performed, although a trifle only remain *to be done*.

CULLÚCABHATTA.

Here, and in the text of NĀREDA (LXXIX), the whole wages are mentioned.

LXXIX.

NĀREDA:—He who *is hired for a time*, and leaves his work before the expiration of the full term, shall forfeit all his wages: *but*, if he desist by the fault of his master, he shall receive as much as was stipulated.

Therefore, if he leave the work by his own fault, no wages whatever shall be paid; but if he desist by the fault of his master, before the full time has elapsed, he shall receive so much wages as were stipulated. The *Retnâcara*.

Others say, the text of MENU (LXXVIII) concerns wages settled

settled by contract ; thus, if wages be stipulated according to the work, without any time specified, and if the work be not performed in consequence of disease or the like, even though it want but little of being complete, the servant shall not receive the wages stipulated. But the text of NAREDA (LXXIX), *they think*, relates to one not prevented by disease. However, that has not been stated by respected authors.

LXXX.

VISHNU : — A servant, or *workman by time*, who leaves the work before the expiration of the full term, shall forfeit the whole price of his labour, and pay one hundred *panas* to the king. Whatever may be injured by his fault, he shall make good to his master ; unless the injury happen by the act of God or of the king. If the master dismiss the servant before the full time has passed, he shall pay him his whole wages, and a hundred *panas* to the king, unless the servant were in fault.

CHANDÉSWARA explains wages or hire (*the literal sense of bhr̥iti*), hire to be earned by work ; a servant, who leaves that (*meaning one who leaves his work*), unless by the fault of his master, shall forfeit the price of his labour. Thus a servant, leaving the wages which were paid him, leaving a part of them *unearned* by comparison with the quantity of work performed, shall forfeit his whole wages ; and pay a fine of one hundred *panas* to the king. In the *Chintāmeni* the text is read, “ a servant, who leaves his work (*carma*) before the expiration of “ the full term.” The sense is obvious.

LXXXI.

MENU ; — But, if he be really ill, and, when restored to health, shall perform his work according to his

his original bargain, he shall receive his pay even after a very long time.

But he who, leaving his work on account of sickness, performs the stipulated task when he recovers health, shall receive his hire even after a very long time. So the *Retnâcara*, with which CULLÚCABHATTA concurs.

If he quit his work when ill; but, when restored to health, perform it even after a long time, he shall receive his pay. Thus the *Chintâmeni*, with which the *Mitâcsharâ* coincides.

As for the exposition, that a servant who quits his work from indisposition, and performs it after his recovery, shall receive his pay for the period of his indisposition, even though it be a very long time, that would be wrong: for pay cannot be due without work performed; and it is inconsistent with the commentaries of many authors.

LXXXII.

NÂREDA; — If a load be damaged by the carrier's fault, whatever is lost he shall be compelled to make good, unless the injury happen by the act of God or of the king.

“A load;” a thing on which the hired servant is employed. “Damaged;” *literally*, broken. “By the carrier's fault;” by the fault of the hired servant. The *Retnâcara*.

Consequently this text does not concern a carrier alone, but any hired servant. It should be considered, that, since the term “carrier” must necessarily have a general sense, it may relate to every sort of servant or labourer.

LXXXIII.

Vṛiddha MENU :—A servant shall pay the full value of what he has lost by mere inattention; twice the value of what he has lost by gross negligence,
or

or malice ; but he shall not be forced to pay any thing for what robbers have seized, for what has been burned, or for what an inundation has carried away, *unless he were himself blameable.*

The text is merely an instance given. Thus, if the loss happen by the servant's fault, but unintentionally, he shall be compelled to pay the full value ; if it happen by his fault, and intentionally, twice the value : but, for a casual loss, without any fault on his part, he shall not be forced to pay any thing. This virtually is the meaning. The *Retnâcara* and *Chintâmeni*.

LXXXIV.

VRĪHASPATI :—If a servant, by the command of his master, and for his benefit only, do an improper act, the offence shall be imputed to the master.

“For his benefit *only* ;” for the benefit of the master *alone*.
“An improper act ;” such as theft or the like. “The offence shall be imputed to the master ;” not to the servant.

The *Retnâcara*.

It appears from the condition, “by the command of his master,” that, if he perpetrate a crime not commanded by his master, even though he intend his benefit only, the blame is not imputed to the master. But if it be argued as proper to affirm, that the master does not partake of the guilt, when a servant, even by his master's command, does an improper act for no advantage, or for his own benefit only, *the answer is*, when a master commands a servant to commit a robbery or the like, for no advantage to himself, still he derives benefit *from the act* by *some gratification it affords him* ; and if he authorize it for the servant's benefit, he derives *some advantage*, by the saving of wages or the like. But if the servant ask, “may I steal that man's goods ?” and the master reply, “steal them,” reflecting, “he is poor, what motive have I for opposing his wish ?” in that case the master, though he au-
thorize

thorize the theft, does not partake of the guilt *. For this purpose the Sage has said, "for his benefit only."

LXXXV.

YÁJNYAWALCYA :—A carrier shall be forced to make good a load *damaged or lost by his own fault*, not by the act of GOD or the king ; and if he disappoint the purpose *for which he is employed*, he shall be compelled to pay twice the amount of his wages.

"Not by the act of GOD or the king:" this denotes a fault on the part of the servant. The *Retnácara*.

A load, to which no accident happens by the act of GOD, or of the king, is so described. If that be lost by a carrier through inattention, he shall be forced to make good the amount of the loss which is incurred on that load.

Again, he who previously undertook a task requisite for the purposes of a master busied in preparations for nuptials, when the auspicious day is near, but afterwards disappoints the purpose by refusing *to perform the work*, shall be compelled to pay twice the amount of his wages. The *Mitácshará*.

Here "purpose" is employed in a general sense: twice the amount of the wages must be paid for the mere disappointment of any business previously undertaken; but if the business cannot fail, the penalty is the full amount of the wages *only*. So others, who follow the *Mitácshará*. But the author of the *Retnácara* says, the word "carrier" should be brought forward; "a carrier, having received his hire, and not departing at the time when the business should be done, &c." In effect there is no difference. Thus the amercement for him who abandons his work has been already declared; the penalty, in the case of failure of the business in consequence of his not performing his task, is now propounded: loss is here the subject. Such is the meaning of both *commentators*. This penalty may be incurred if the business might be greatly injured; for the servant does not disappoint

* I hope no native lawyer will ever be guided by this strained interpretation. T.

disappoint it, if it be accidentally accomplished. The following text makes this evident :

LXXXVI.

Vṛiddha MENU :—He who does not perform his task at the full time *agreed on*, and disappoints the business, shall be forced to pay twice the amount of his wages ; and another shall be employed in his stead.

LXXXVII.

YĀJNYAWALKYA :—One who declines *the work* when yet distant, *shall be compelled to pay* the seventh part of the wages, or the fourth part if *he decline it* on the way ; but he who quits it half way, shall be forced to give the full amount of the wages.

“When yet distant,” “on the way,” and “half way,” are explained by the circumstances of another servant being found with ease, with difficulty, or with greater difficulty.

In these instances, according to the circumstances of each case, the carriers shall be compelled to pay a seventh, or a fourth part, or the full amount of their hire. A master, also, dismissing a servant at these periods, shall be forced to give the same.

CHANDÉSWARA.

This is *apparently* inconsistent with the payment of twice the amount of the wages, as above mentioned ; but is reconciled according to CHANDÉSWARA, by directing the payment of twice the amount of the wages, if a servant cannot be found by any means. If this be said to contradict the text of *Vṛiddha* MENU (LXXXVI), *the answer is*, the text of *Vṛiddha* MENU should be understood as relating to a case in which it is apparently impossible to find another servant, but in which, after desertion, another servant is accidentally found. If another servant can be

immediately found, a seventh part must be paid by him who abandons work to which he has himself agreed: but he must pay twice the amount of his hire, if he decline the work at the moment when it should be commenced. Again, he who deserts his employer when a distant portion of the way remains untravelled, shall pay a fourth part of his wages, or their full amount if he quit him half-way. The master also, in similar circumstances, shall pay the proportions of the hire mentioned in this text. Such is the opinion expressed in the *Mitācsharā*.

The meaning is this: at home, a master occupied in other business (*and therefore at leisure from the business in question*) can find another servant without trouble; the fine is therefore a seventh part, because the offence is very inconsiderable. A servant, who insolently says at the moment of departure, "I will not perform *the contract*," offends greatly, and shall therefore be fined in twice the amount of his wages. Travelling on the road, and leaving his work at a near place, he does not insolently refuse the *work*, neither can another servant be found without trouble; therefore he shall be fined a fourth part of the wages: but, deserting *his employer* at a distant place, he is a greater offender, and shall therefore be amerced in the full amount of his wages. Thus the text (LXXXVII) is expounded in the same manner, *both* by CHANDÉSWARA, and by the author of the *Mitācsharā*. But, the case of one who disappoints the purpose *for which he is employed* (LXXXV), is different.

LXXXVIII.

Matsya-purāna:—He who does not perform *business* of science or art, after receiving a consideration, shall be amerced in the full amount of it, by a king who knows the law.

Here the consideration must be repaid to the person who employed him for science or art; as it is repaid to a master by a servant who does not perform the work: but a fine to the king is not here mentioned. However, it is directed under a former head.

LXXXIX.

LXXXIX.

NÁREDA:—The owner of goods, who hires beasts for draught or burden, and takes them not, shall be compelled to pay a fourth part of the hire; or the full amount, if he leave them on the road.

2. And so shall a carrier forfeit his hire, if he transport not *the goods*.

“The loader;” the owner of goods. “Hiring;” procuring on hire. “Beasts for draught or burden;” horses and the like, or oxen and the rest. “A carrier;” one who receives hire for the carriage of goods. CHANDESWARA.

But others say, since the loss of the whole hire, or of a fourth part, is directed in case of desertion on the road, he who declines the work when *the time for performing it is* yet distant, should pay a seventh part; and the rule, in regard to the forfeiture of a fourth part, should be understood as explained in the former text (LXXXVII).

XC.

Vṛiddha MENU:—Should a merchant, *having hired a servant for a certain journey*, sell his goods by the way, and discharge the servant, *wages* must be paid even for the part of the way which they never passed; but the servant shall receive half only of the hire *which would have been due if they had gone to their journey's end*.

“The part of the way which they never passed;” so much of the journey as remains untravelled. The *Retnācara*.

“Even for the part of the way which they never passed;” to the servant, though he have not travelled the whole distance previously stipulated, wages shall be paid for the work done; but half, or a portion only, of the hire, for the part of the way which they have not passed. The *Chintāmeni*.

On the question, whether wages shall be withheld because they have not gone the *whole* journey? the text declares wages shall be paid, because the servant is not in fault. This may be stated as meant in the *Retnâcara*. The word "half" is not here intended for equal parts, but a portion in general, as interpreted in the *Chintâmeni*; "he shall receive a part of the wages for going that journey, though he have not travelled the *whole* distance:" and this is reasonable, since the penalty of a fourth part of the hire is directed for desertion on the way: but in this case something less than a fourth part must be paid, since he discharges the servant because he has not occasion *for his service*. And this text may be *literally* applied to the case of his selling the goods half-way.

XCI.

CĀTYĀYANA:—And if the goods be stopped or seized on the way, the servant shall receive wages for so much of way as has been passed by him.

"Be stopped;" be sold in consequence of being stopped by any person.

MISRA and CHANDÉSWARA.

The sense is, that, since the dismissal of the servant does not arise from the merchant's own choice, greater wages shall not be paid.

XCII.

NĀREDA:—A servant stipulating *wages for a journey*, but leaving the cart on the way, shall be forced to give a sixth part of those wages; but the man who employs labour, and pays not *its hire on demand*, must *afterwards* pay it with interest *computed from the sixth month after the demand*.

He who stipulates wages on an agreement in this form, "I will go *the journey*," but leaves on the way the goods for which the cart was hired, shall be compelled to give a sixth part of the
amount

amount stipulated as wages. Such is the sense of the first part.

The *Retnâcara*.

And this must be explained by a particular application of the text *to a special case*, like the seventh part and the like ordained by YÁJNYAWALCYA and others (LXXXVII and LXXXIX).

But the master, if he do not pay the hire of the journey to the servant who goes *that journey*, shall be compelled to pay it with interest.

The *Retnâcara*.

It should be mentioned, that interest on wages accrues six months after demand (Book I, v. LVI). Otherwise they do not bear interest (Book I, v. LXXI).

XCIII.

VRĪHASPATI: — The master who pays not the hire of labour after the work is performed, shall be compelled by the king to pay it, as well as a proportionate amercement.

It should be here understood, as in the preceding text, that he must pay it with interest.

XCIV.

CĀTYĀYANA: — The master who leaves in the way a tired or sick servant, without taking care of him in a village for three days, shall pay the first or *lowest* amercement.

The master who, not taking care of him in a village for three days, leaves a tired or sick servant, shall be fined by the king.

The *Retnâcara*.

By the word “leaves,” want of care is implied. That it would be an offence in a tired servant to leave the work, *though* able to carry the burden after recovering from his fatigue, has been positively declared by former texts.

Harlots have been considered by CHANDÉSWARA and others,

under the title of Hire ; wherefore they are also noticed in *this work*.

XCV.

NÁREDA : — A dancing girl, having received her pay, yet refusing to attend, shall pay twice as much as she received ; and if her employer refuse to admit her, he shall forfeit what he had paid.

XCVI.

Smṛiti : — But if the harlot attend not when sent for, because she is indisposed, or fearful, or fatigued, or employed in the service of the king, she is blameless.

XCVII.

Matsya-purāna * : — A harlot who goes to another man after receiving hire, and repays not the money received, shall be compelled to pay the lecher's fee, or twice the amount.

2. A man approaching a woman without paying her hire, or approaching her in an unlawful manner, or scratching her with his nails, or the like,
3. Or unnaturally abusing her person, or causing her to be approached by many, shall be compelled to pay eight times the amount of the hire *promised*, and an equal fine.

4. He

* I might have been justified in omitting these laws, by the remark of Sir WILLIAM JONES, when translating other texts under this head from the *Vivádārnava-Sétu*, that " the rest are not worth inserting." I am certainly justified in softening the original indelicacy, and in omitting a gross commentary on these and on the preceding texts ; for they are surely misplaced in a digest of law on contracts and successions. T.

4. He who, on the pretence of one person, brings a harlot for the use of another, shall be amerced by the king in one *másha* of gold.
5. If a man employ a dancing girl, and give her no pay, he shall be compelled to give her twice as much as she ought to have received, and shall pay a fine to the king of the same amount. Thus justice is not violated.
6. The penalty ever to be paid by many persons approaching the same woman, is twice the amount of what she should have received if approached by one only, and each of them shall likewise pay twice the amount as a fine to the king.

XCVIII.

NÁREDA :—If a dispute should arise among the lascivious frequenters of her house, in respect of matters occurring there, the wife have declared, that it shall be determined by the principal harlot.

The hire of a house or the like is similar to the hire of labour ; it is therefore discussed by authors in this place. That shall be now propounded :

XCIX.

NÁREDA : — He who dwells in a house which he built on the ground of another man, and for which he pays rent, shall take with him, when he leaves it, the thatch, the wood, and the bricks ;

2. But if he live without paying rent on the ground of another without the owner's assent, he shall by no means, when he quits it, take away the thatch and the timber,

“ Rent ;”

“Rent;” a consideration for abode. The *Retnâcâra*.

It may be explained “hire” and so forth.

He who dwells in a house built at his own charge, or by his own labour, on the land of another, used for the site of dwelling-houses, may, provided he paid rent for it, take away his own wood, and the bricks of walls and the like, when he shifts his abode; or he may sell the wall as it stands. But if he pay no rent whatever, he shall not take the grass, wood, bricks, and other component parts of the house.

The hire of a house is common in royal cities: in other instances also, what is usually paid in the same form with revenue, by tenants residing on the land of *Brâhmanas* and the like, is merely hire or rent: for it is not truly revenue, since revenue or taxes are the sixth part of the produce and the like, payable to the king, as ordained by the law.

C.

NÂREDA:—The grass, wood, and bricks, which are thus removed, belong to him who leaves the ground, provided he paid rent for the spot, and not otherwise.

In the former texts it had been mentioned, that, *in one case*, he may take them; *in the other*, he may not take them. That distinction is grounded on property, and on the want of property. These, therefore, are now explained in this text.

“If he paid rent;” if he paid the price of the abode granted to him. The *Retnâcara*.

CI.

CÂTYÂYANA:—He who hires, at a fixed rent, a house, a pool of water, a market-place, or the like, shall be compelled, *in a court of justice*, to pay the rent of it, until he restore it to the owner.

“A pool

“ A pool of water ;” one made by another man, and not consecrated, *but intended for use in this world.*

The *Retnâcara* and *Chintâmeni*.

It appears, therefore, that no rent should be paid for a consecrated pool to him who made it.

CII.

NÂREDA :—He who hires, at a fixed price, an elephant, a horse, a bull or cow, an ass, or a camel, shall be made to pay for the hire of it as long as he delays to restore the cattle, having used it according to agreement.

If a thing hired be destroyed, it is the possessor's fault, unless the injury happen by the act of God : as mentioned under the title of Deposits.

CIII.

Vriddha MENU :—He who has hired a carriage, or vehicle of any sort, and takes it and goes away with it, but *afterwards* refuses to pay the hire, shall be compelled to pay it, even though he never used the carriage.

“ A carriage ” generally ; meaning only a vehicle of any kind. “ Even though he never used it ;” even though nothing have been carried on it.

The *Retnâcara*.

In the *Chintâmeni* also, the last remark occurs ; and it is said, a vehicle in general is alone meant. But the same rule may be applied to a house and the like.

CIV.

NÂREDA : — Things hired *for a time*, at a settled price, let the hirer give back when the time has elapsed :

elapsed: whatever be broken or lost he shall make good, except in the case of inevitable accident or irresistible force.

“Settled price ;” hire. “Inevitable accident, or irresistible force ;” the act of GOD, or of the king. Therefore, a carriage and the like, broken without the act either of GOD or of the king, must be made good by the hirer. When the time has elapsed, the thing hired should be restored to the owner.

The *Retnácara*.

Consequently, should a carriage or the like, hired at a settled price, be lost without the act of GOD or of the king, it is the hirer's fault, as appears from this law. But MISRA expounds the text, “if it be not restored when the time has elapsed, and it be destroyed by time or the like, without the act of GOD or of the king, it must be made good by the hirer.” In his opinion, a thing lost or injured by the fault of the hirer, without the act of GOD or of the king, must be made good by the hirer ; as appears from texts cited in Book II, on the subject of Deposits and other Bailments.

CHAP. II.

ON THE

NON-PERFORMANCE

OF

AGREEMENTS.

ALTHOUGH nonpayment of wages and hire occur among disputes between master and herdsman, (for which reason this title is delivered by VRĪHASPATI immediately after that of nonpayment of wages, and disputes between master and herdsman are placed first in the *Retnâcara* and other works,) yet nonperformance of agreement has been propounded by MENU immediately after nonpayment of wages: wherefore it is first inserted in *this digest*, (before contests arising between the owners and keepers of cattle.)

I.

MENU: — This is the general rule concerning work undertaken for wages or hire: next, I will fully declare the law concerning such men as break their promises.

“ This general rule ” is fully declared: although the wages of herdsmen have not been yet propounded by MENU, the rule in case of nonpayment has been delivered, and the wages will be explained under a subsequent head. “ Next, I will fully declare &c.” breach of promise, such as the nonperformance of actual agreements,

agreements, suggested *for consideration* by breach of compact between master and servant, is *next* propounded.

The text is thus expounded by CULLÚCABHATTA ; “ this rule concerning work, under the title of Non-payment of Wages, has been completely delivered : I will next declare the rule of punishment for those who violate their engagements.”

II.

VRĪHASPATI :—This conduct has been prescribed to masters and servants ; now learn concisely the rules concerning promises.

“ Prescribed to masters and servants,” including master and herdsman ; for that title of law is previously delivered by VRĪHASPATI. The present title of Non-performance of Agreements is expounded by CULLÚCABHATTA (in *his gloss* on the fifth verse of the eighth chapter of MENU) “ breach of an agreement made.” NĀREDA explains it :

III.

NĀREDA :—The *general* rule settled among irreligious men, and among citizens and the like, is named a compact ; *and* the title of law concerning disputes arising thereon, is called breach of compact.

“ *Páshenda*, or irreligious ;” excluded from the triple *Vēda*, as the *Yavanas* and others. “ Citizens ;” townsmen. “ And the like ;” this term intends companies of traders, artisans, &c. “ The rule settled,” as will be mentioned. An agreement for stipulated duties, violated by non-performance, *is the subsequent title.*

The *Retnācara*.

Thus the breach of a general agreement, in this, or other form, “ we will join to repel thieves and robbers,” is a breach of promise. An agreement for stipulated duties is a compact ; non-performance

performance of it is a breach of compact ; and the government of those who break their engagements, forms a title of law. A similar exposition is given in the *Mitácshará*.

IV.

YÁJNYAWALCYA :—Having erected a building in the town, and endowed it, and having placed there *Bráhmanas* learned in the three *Védas*, let the king enjoin them to observe their duty.

Having erected a building, or house of masonry, or the like, in the town or city, and having placed there *Bráhmanas* learned and virtuous, let him give this injunction, “ observe your duty.”

Having erected an endowed building ; an edifice enriched by a grant of gold or the like. Such is the meaning, on the concurrent exposition of the *Mitácshará* and *Retnàcara*. Endowed with land, money, or the like, whereon the priests residing there may subsist. The intention is, that he should assign land, money, or the like, for their maintenance. The Sage declares what should be done by *Bráhmanas* so enjoined to observe their duty.

V.

YÁJNYAWALCYA :—Duties which are stipulated or seasonable (*for sámayica may bear either sense*), or prescribed by the king, and which are not inconsistent with their own *regular* duties, should also be diligently observed *by those priests, and enforced by the king*.

Duties arising from compact, or occurring from season, and consistent with moral and civil law, such as care of cattle, preservation of water, management of temples, and the like, should be diligently observed. And the king should enforce the observance of seasonable duties, not inconsistent with *regular* duty, such

as the entertainment of all travellers, and a rule that horses and the like shall not be carried to the dominions of his enemy.

The *Mitācsharā*.

It follows, that the priests collectively, and the king, are the persons by whom these duties should be observed. But “seasonable” is explained in the *Retnācara*, ‘rites for the happiness of society.’ Such are monthly benedictions pronounced for the king; and monthly deprecation; and similar duties prescribed by the sovereign.

Others hold, that YÁJNYAWALCYA here explains the sense of the word, “duty,” in the expression “enjoin them to observe their duty;” acts which are seasonable, or prescribed by the king, and not inconsistent with their own regular duties. Thus it follows, from the word “also,” that the duties of their tribe and order must certainly be observed: the prescribed acts of their tribe and order, seasonable duties, and those commanded by the king, are intended by the term “their duty.” Seasonable acts have been explained by authors, as above. “Duties or rules prescribed by the king” are such as the following; “for this man, though not degraded, yet fallen under the king’s displeasure, no sacrifice shall be performed.” These rules must be observed, if they be not inconsistent with regular duty. Therefore, an injunction to attend at the king’s gate from dawn to evening, or to sacrifice for all the inhabitants of a town, need not be observed; for it would obstruct the whole of the rites constant and occasional, or be incompatible with sacrificing for twice-born classes only. Yet, on particular occasions, an obstruction to the performance of constant rites may be admitted. As for the opinion, that a duty occurring with the season, such as deprecatory rites and the like, must necessarily be performed, though not promised, it is wrong: for it is founded on no authority, and punishment is directed for breach of promise only.

VI.

VRĪHASPATI : — Assembling priests endued with knowledge of the *Véda*, learned teachers of the scripture, and priests who keep a perpetual fire for oblations,

oblations, let the king establish them in that place, and assign their subsistence :

2. Let him grant to them, in his own dominions, houses and land exempt from taxes, declaring, by a written grant, that the royal dues are remitted :
3. They must perform, for the townsmen, the constant, occasional, and voluntary rites, and those which are deprecative, or expiatory, and they must decide doubtful cases.
4. A compact, formed on consultation among the inhabitants of a town, the companies of artisans, and the several classes of men, must be observed in a time of alarm, and at the season of rites *performed in common*, and also *on other occasions*.
5. If there be apprehension of highway robbers or thieves, it is considered as a common danger ; and should be repelled by all, not in any instance by one alone.
6. First establishing mutual confidence, by a solemn oath, by a written contract, or by the attestation of witnesses, let them next proceed to the business *agreed on*.
7. Neither men influenced by *causeless* enmities or passion, nor such as are foolish, indolent, timid, rapacious, diseased, or aged, nor infants, may be appointed *chief* advisers in affairs (*cárya chintaca*) ;
8. But those who are pure, who know the scripture and their *own* duties, who have dominion over their passions, who are capable, who sprung from honest families, and are skilled in all affairs, may be appointed highest *of the confederacy*.
9. Two, three, or five persons should be appointed advisers (*hitavádin*) of the association ; their coun-

fel should be followed by the inhabitants of the town, the companies of artisans, and the several classes of men.

“*Srōtriyas* ;” learned teachers of the *Vēda*. “Houses and land” (VI 2), in the active *instead of the oblique* case, may be reconciled from the license of a Holy Sage. “In a state of exemption ;” the royal dues being remitted. CHANDÉSWARA.

“They must perform” &c. (VI 3) ; such a practice occurs in some countries, where a person is commissioned, and a priest is appointed, to perform the constant and other rites for the townsmen ; and it appears that the priest is vested with property, consisting in that office, by the authority of a mandate from the reigning king.

“And decide doubtful cases” (VI 3) ; cases relating to judicial contests. This is a just interpretation, and consistent with ordinances.

“The inhabitants of the town” (VI 4) ; *literally*, the town ; intending the inhabitants collectively. “Companies of artisans ;” meaning a body or multitude of persons belonging to the same tribe, and following the same profession. “The several classes ;” *Brāhmanas* and the like collectively. CHANDÉSWARA.

“Companies of artisans ;” workmen or artisans collectively. The *Chintāmeni*.

What is done after consultation, by these bodies and companies, or by any of them, is a compact or agreement. The Sage explains the motive and season of such an agreement (“in a time of alarm” &c. VI 4). “Alarm ;” apprehension, or suffering, from robbers or the like. “Rites to be performed *in common*,” such as fasts and other sacraments. So MISRA. CHANDÉSWARA also expounds it similarly. By the words “or the like,” it is indicated, that an association should also be formed if injury be suffered from the inhabitants of a different town, or from other inhabitants of the same town. By the expression “and also,” it is intimated, that they proceed in the same manner on other occasions, such as general rejoicings and the like.

Thus it appears, that an agreement should be made for repelling robbers and the rest. The motive of a compact is thereby declared ;

declared ; the *proper* "season" is obvious, (corresponding with the motive :) he declares the form *in a subsequent verse* (VI 6).

"A solemn oath ;" ordeal, as the contract of water which has touched *the images of* potent deities. The meaning of a "written contract" is obvious. "Attestation of witnesses ;" *literally*, intermediate persons ; intending persons who become witnesses of the compact, and are not partial favourers of any one. The literal sense of the term intermediate, (*medhyast'ha*,) is one who stands between (*medhyē tisht'hati*).

Thus any one of these three modes may be employed for the purpose of proving the agreement at a subsequent time. The construction of the sentence is, "establishing confidence by any one of those three modes."

Among those inhabitants of the town and the rest, if all had *equal* authority, no benefit would arise from their various degrees of wisdom ; therefore some should be invested with chief authority, as advisers in affairs, to show the best *mode of proceeding*. What descriptions of persons they should not invest with principal authority, the Sage declares (VI 7). "Men influenced by *causeless* enmities ; *literally*, inimical : " he who proceeds to an act without attention to the consequences of it, is said to be "influenced or impelled ;" and the suffix here employed bears the same sense with the term thus explained by JUMERA.

"Influenced by passion" (VI 7); under the impulse of excessive lust or anger. "Foolish : " the term is explained, in the *Ret-nācara*, incapable ; but explained by GÓYÍCHANDRA, in the *Sancshipta-sāra-parishīa*, "idiot."

From what descriptions of persons they should appoint their chiefs, the Sage declares (VI 8). "Pure," *that is*, virtuous ; not deceitful. "Governing : " having dominion over their organs ; void of avarice and the like. "Their counsel should be followed ;" consequently a fine is incurred by a breach of their commands. This YÁJNYAWALCYA expressly declares :

VII.

YÁJNYAWALCYA :—The directions given by the advisers of the association should be observed by all ;

he who disobeyes them, shall be compelled to pay the first amercement.

The first amercement ; meaning two hundred and seventy *panas* of copper*.

The *Mitácshara*.

This offence consists in disobeying the directions given by the advisers of the association ; CÁTYÁYANA prescribes a fine for him who, from insolence, urges *too obstinately* his own opinion during a discussion on business to be performed.

VIII.

CÁTYÁYANA :—He who interrupts the reasonable discourse of a speaker, and allows no other to speak, and he who talks idly, shall incur the first amercement.

“Who interrupts reasonable discourse ;” who thus breaks in upon it, “you talk absurdly :” one who mutters, “I also will speak, why should these talk ?” “Who allows no other to speak ;” *literally*, giving no opportunity ; one who gives no opportunity for others to speak ; or allows no other *to discourse*, and prates much *himself*. These, and he who urges bad advice, insisting that it should be adopted as good, shall pay the first amercement.

In the *Retnácaca* it is explained, he who talks *idly* to the advisers of the *association*. The sense may also be thus stated ; he who behaves with disrespect towards them.

IX.

YÁJNYAWALCYA :—This is the rule for companies of artisans, traders, and irreligious men, and for *various* tribes ; let the king preserve their distinctions, and oblige them to adhere to the conduct above mentioned.

“Artisans ;”

* So the MS. It should be two hundred and fifty *panas*.

“Artisans;” subsisting by the manufacture of the same commodity. “Traders” (*naigama*): this word is explained as denoting the *Pásupatas*, and other sectaries, who admit the authority of the *Vēda* no further than as a good institute. “Irreligious men:” those who do not even admit the authority of the *Vēda*; such are dancers, followers of BUDDHA, and the like. “Tribes;” sets of men living by the same profession, such as soldiers and the like. For these four descriptions of persons, this is the rule, as propounded in the former text (V): Let the king preserve their distinctions; the rule of duty for the artisans and the rest: and let him oblige them to adhere to the conduct above mentioned.

The *Mitácsharā*.

Others take the word *naigama* in its literal sense of trader, as it is explained in AMERA’S Dictionary.

Many texts delivered by YÁJNYAWALCYA immediately after that above quoted (V), will be cited in their places. By tribes are here meant other sets of men besides artisans and the rest, and different from *Bráhmanas*.

The *Retnácara*.

Thus, in whatever tribe an agreement is made, by that *tribe* it should be observed; it follows, that disobedience to directions given by one who is appointed *prámānīca*, or president, of barbers or the like, is a cognizable offence. This is the whole meaning.

X.

NÁREDA:—Let the king maintain the associations of irreligious men, of sectaries who detract from the authority of the *Vēda**, of companies of artisans, traders, and soldiers, and of various tribes and the like, both in a place of difficult access, and in a frequented spot.

“Companies of traders” (*pūga*); merchants and the like collectively. Others explain it an assemblage of persons of various classes, who have no determinate profession. “Companies of soldiers;”

* *Naigama*: see the gloss on the text of YAJNYAWALCYA (IX).

foldiers ;" armed men collectively. " Various tribes and the like ;" the term " and the like" suggests multitudes and crowds.

The *Retnâcara*.

The term " and the like," including all descriptions, denotes *that others are comprehended in those which are noticed*.

The *Chintâmeni*.

XI.

NĀREDA :—Whatever be their duties, their *regular* business, and prescribed rules, and whatever be the conduct enjoined to them, that *let the king* approve.

" Their duties ;" their prescriptive usages. " Their business ;" their proper occupation for a livelihood. " Conduct enjoined to them ;" prescribed behaviour. The *Retnâcara*.

" That approve ;" the word king must be supplied in the sentence, " that let the king approve." Thus it is directed, that he shall not act otherwise than *is consistent with* their prescriptive usages, and so forth.

XII.

CĀTYĀYANA :—Whatever be the duty of *particular* societies, according to that let them conduct all affairs, *firmly* abiding by their own profession.

This should be understood as coincident with the prescriptive usages, or duties, mentioned by NĀREDA.

XIII.

CĀTYĀYANA :—The ascertained commands of the king, not inconsistent with *regular* duty, should in the first place be exactly performed as directed by the king.

2. The sinful man, who obeys not such ordinances as

as are made by the sovereign, *and are not inconsistent with the divine law*, shall be rebuked and punished as disobedient to the royal command.

“Not inconsistent with *regular duty* ;” the prescribed acts by each class and order. “Whatever be the ascertained command of the king” (*not repugnant to that duty*), such should be the conduct of the subject. The Sage directs an amercement in case of disobedience (XIII 2) : neglect of the king’s commands is subjoined as the cause of the offender’s being deemed a sinner. This offence consists in the breach of allegiance. VRĪHASPATI now declares the engagements of societies and the like :

XIV.

- VRĪHASPATI :—“The construction of a hall, of a
 “house of refreshment, or of a temple, a pool or
 “a garden, relief to the helpless and poor, sacri-
 “ficial rites,
 2. “A common way, and mutual defence, shall be
 “effected by us, according to *our several* propor-
 “tions :” if such a written contract be made, it
 is a binding engagement,
 3. And must be observed by all. Of him who re-
 fuses *his part*, though able to perform it, the pu-
 nishment is forfeiture of all his property, and ba-
 nishment from the town :
 4. And for that man who contradicts *his associates*,
 or neglects *his part*, a fine is ordained of six *nishkas*
 containing four *suvernas* each.

In the case of an agreement for the construction of a hall or the like, *which is the highest association*, if a man break his engagement, though able to perform it, he shall be punished by confiscation of all his property, and banishment from the country : and this punishment is directed for the case where he formally

said, "I will perform it;" but now says, "I will not perform it." In case of neglect, another punishment is directed (XIV 4): *the first term in that text* is explained by AMERA, 'contradiction.' Thus, if a man, having previously formed an engagement, conspire with some party to break it, he shall be fined in six *nishcas*, containing four *suvernas* each; or if he be guilty of neglect, (that is, if he do not give attention to it,) he shall be fined in the same amount.

Others hold, that an adviser in affairs of *the association* is guilty of neglect if he do not coerce one who refuses to perform his part, and shall therefore be amerced: and any stranger also may be amerced, if he interfere to break the association.

"A common way" (XIV 2); *literally*, a family-way; a road for a family. "Mutual defence;" *literally*, resistance; *meaning* opposition to the inroads of bad men. The *Retnâcara*.

XV.

MENU:—The man, among the traders and other inhabitants of a town or district, who breaks a promise through avarice, though he had taken an oath to perform it, let the king banish from his realm.

2. Or, according to circumstances, let the judge, having arrested the promise-breaker, condemn him to pay six *nishcas*, or four *suvernas*, or one *'satamâna* of silver, or all three if he deserve such a fine.
3. Among all citizens, and in all classes, let a just king observe this rule for imposing fines on men who shall break their engagements.

"A town;" in its usual sense. "A district;" a number of towns. "Traders and others;" a multitude of persons following the same profession, but residing in several districts. "Having arrested" (*nigrihya*); this may be expounded, having admonished.

admonished. Six *nishcas*, or four *suvernas*: the words may signify, six of those *nishcas* which weigh four *suvernas* each; to exclude other quantities, namely the *nishca* of one hundred and fifty *suvernas*, and the *nishca* of five *suvernas*. The *Retnâcara*.

MISRA delivers the same exposition, and adds; "MENU here intends six *nishcas*, and has further directed a *satamâna* of silver." A *satamâna* contains three hundred and twenty *raçticâs*, or seeds of the *gunjâ*.

CULLUCABHATTA holds, that, according to circumstances which may aggravate or extenuate the fault, the punishment should be exile, and fines of six *nishcas* and one *satamâna*; all, or each of them.

Thus, in concurrence with VRĪHASPATI, exile is the penalty directed in case of refusal; a fine of six *nishcas*, in case of opposition or negligence; and a fine of one *satamâna*, in the case of a slighter offence.

"All classes" (XV 3); an assemblage of several classes.

The *Retnâcara*.

XVI.

NĀREDA:—Those especially should be punished, who separate *themselves* from the association: they should undergo fear and terror, being avoided like diseased persons.

"Who separate from the association;" who violate the engagement formed by the community.

XVII.

YĀJNYAWALCYA:—Him who embezzles the property of the company, and him who violates his engagement, let the king banish from the realm, after confiscating all his effects.

"The property of the company;" the joint property of all the citizens and the like.

The *Retnâcara*.

VIJNYĀ-

VIJNYÁNÉSWARA gives a similar exposition ; but adds, that, “ in the case of a breach of compact or engagement, enjoined by the king, or formed by the society, if the offence be great, the penalty is banishment from the realm ; but if the offence be slight, *it should not exceed* the amercements above mentioned, as propounded by MENU.”

Some explain it as intending the penalty for embezzling money set apart for the purpose of building a temple or the like.

XVIII.

CÁTYÁYANA:—BHRĪGU directs, that all those who commit violences, oppose *the general will*, and dissipate the wealth of the community, shall be punished, after giving notice to the king.

“ Who commit violences ; ” who use force against the society, by blows and the like. “ Who dissipate the wealth of the community ; ” who destroy property amassed by the association for a temple or the like. “ They should be punished : ” they should be fined in the amercement directed ; for an amercement of six *nishcas* is ordained in case of opposition. They shall not be banished or expelled, *as the term uchchédya might seem to denote*. Or it may be understood, that, in case of opposition, if the offence be great, *the penalty is* expulsion.

XIX.

VRĪHASPATI:—He who injures or dissipates the common stock, or breaks his engagement, shall be banished from the town for that *offence*, even though he be learned in the triple *Véda*.

XX.

The Same.—An insulting and malevolent man, one who

who opposes *the society*, or commits violences, and an enemy to the company of artisans, to the society of traders, or to the king, should be instantly banished.

“ Insulting ;” hurting *the* minds of others. “ Malevolent ;” inimical. The *Retnācara* and *Chintāmenī*.

XXI.

VRĪHASPATI : — Let the chiefs of families, of associated artisans, or of tribes, whether residing in towns or forts, curse and forsake finners.

“ Curse ;” punish with maledictions. The *Retnācara*.

By *this text* it is thus declared legal for the chief of a family, or the like, to inflict punishment on offenders.

XXII.

VRĪHASPATI : — Whatever be done by them according to their duty, whether harsh or kind towards *other* men, should be *first* approved by *their chiefs* : these indeed are considered as undoubted actors in *all affairs*.

“ According to their duty ;” not repugnant to it. “ Undoubted actors ;” undoubted *guides* in affairs. CHANDÉSWARA.

Whatever business any person, included in the association, performs consistently with regular duty, that should have been *previously* authorized by the chief.

XXIII.

VRĪHASPATI : — If they conspire, from an impulse of enmity, to injure one of *the society*, they should be

be restrained by the king; and actual injuries shall be punished.

Among associates, if several unite to hurt one, the king should restrain them; and if they do a wrong, by verbal deception or the like, he shall chastise them: and the punishment in this case should be exile or the like, according to the magnitude of the injury.

XXIV.

VRĪHASPATI:—If a quarrel arise between the chiefs and the communities, let the king decide it, and reduce them to their duty.

If there be a dispute between the communities and their chiefs, (meaning the persons invested with authority, and called *presidents* or *prámānīca*,) let the king determine the controversy according to the proof of their disobedience to their chiefs; and in consequence of his decision, either punishing or not punishing them, or *their chiefs*, according to circumstances, let him reduce them to their duty. But if the disobedience be heinous, banishment is proper.

XXV.

NÁREDA:—Promiscuous assemblies of those *persons*, military array without cause, and reciprocal injuries, let not the king tolerate.

“Promiscuous assemblies;” a superior society mingled with another of inferior rank. “Military array without cause;” without a sufficient motive, such as apprehension of danger and the like. “Mutual injuries;” reciprocal wrongs. “Those *persons*;” irreligious men and the rest, as already mentioned by NÁREDA (III). The *Retnácara*.

Soldiers and the like may carry arms even without a special motive. The sense resulting from the text is, that the king

should restrain all others from *meeting in* promiscuous assemblies, from carrying arms without cause, and so forth.

XXVI.

CĀTYĀYANA:—He who *usually* eats off the same vessel, or in the same line with another, shall be amerced if he refuse to do so without showing a *reasonable ground of exception*.

He who refuses to do so, shall be amerced. The *Retnācara*.

It is customary, with some *tribes*, for many persons to join and eat off the same vessel. The rule is general: he who *usually* eats another's food, may not, through perverseness, without stating a reasonable ground of exception, or other sufficient cause, reject food given by that person. It may be *also* determined, that even if the *practice originated in such motives as are mentioned* in the *Mahābhārata*, "through friendship food may be eaten from each other's hands, or it may be so eaten through extreme distress;" even when a motive for refusal should be shown, *namely*, a breach of that friendship which was the previous motive for eating food from each other's hands.

XXVII.

VRĪHASPATI:—Those traders who conspire to abscond and defraud the king of his due, shall be compelled to pay eight times the amount.

Literally, the king's share, meaning the king's due.

The *Chintāmeni*.

Thus, if merchants going for the purposes of trade, and buying and selling goods, abscond in the night, after promising to pay the king's taxes, he may take from them eight times the amount of his taxes; or in the same instance the chief of the company may levy that penalty. These two laws concerning societies (v. XXIV, &c. v. XXVII) are mentioned incidentally.

XXVIII.

XXVIII.

NÁREDA : — Let the king restrain them from acts which are injurious to him, which in their nature are vile, or which obstruct his affairs :

2. And let a king who desires prosperity, repress sinful proceedings, which are unauthorized by moral law, if they be actually attempted.

Literally, disapproved by nature ; “ acts which in their nature are vile.” “ Sinful proceedings,” as the practice of gaming and the like ; acts not productive of good. “ Unauthorized by moral law ;” not familiar under moral institutions. “ Restrain them ;” the irreligious men and the rest (III). The *Retnácara*.

Since whatever general agreement has been made by irreligious men and the rest, must be observed ; and if they break it, they must be punished by the king ; *it might, therefore, be inferred, that every agreement, even though illegal, must be maintained* : for instance, “ we will all prevent the subjects from paying taxes to the king ;” or, “ let us always go naked ;” or the following, “ we will game ; we will solace ourselves with harlots ; we will run on the king’s highway ; let us worship an ant-hill under a *śācōś’aca* tree*.” It may be affirmed, that this text is intended to prevent such an inference.

XXIX.

YAJNYAWALKYA : — When their business is finished, let the king dismiss those who have attended for the affairs of a community, after honouring them with *tokens of* regard, with gifts, and with expressions of civility.

2. What-

* The rough-leaved trophis of Botanists, called in the vernacular dialects ‘*Sábór’a*’ or *Syaura*. The author alludes to a proverbial expression of contempt ; “ thou art like an ant-hill under a ‘*Sábór’a*’ tree.” The plant itself also furnishes a contemptuous simile.

2. Whatever a man who is sent on the affairs of a community shall receive, let him deliver *to his principals*; if he do not voluntarily deliver it, he shall be compelled to pay eleven times the amount.

Let the king, having finished their business, dismiss persons who have attended him on the affairs of a community, after honouring them with tokens of regard, with gifts, and with expressions of civility: such is the meaning according to the *Mitâcsharâ*.

“Tokens of regard;” allowing them seats and the like. “Gifts;” honorary presents of clothes and the like. “Expressions of civility;” compliments. The meaning is, that attention should be shown by the king to the affairs of a community.

The second verse is thus expounded by VIJNYÂNÉSWARA; a person deputed by merchants* to attend the king on the affairs of the community, should, even unasked, deliver to those merchants whatever clothes, money, or other things may be received: otherwise he shall be compelled to pay a fine equal to eleven times the amount of what was received. Consequently, whatever is given by the king, in an honorary form, to one deputed on the affairs of a community, should be received by all the members of it.

XXX.

VRIHASPATI:—Whatever he may there obtain, is the property of all *the associates*, and should be divided according to their several proportions, whether it have been received six months or one month.

“There;” at the king’s palace. In declaring it the property of all, without a restriction, that only that which is given to all belongs to all, the meaning is this; whatever is received by some of the associates, while attending at the king’s palace, is the

* *Mebâjen*, usually employed in its literal sense of a great or respected person; but here seems to signify a merchant, as in the common dialect.

the property of all. It is observed in the *Retnâcara*, that “six months or one month” are mentioned in an indefinite sense: consequently it is meant that, after many days, they may collect and divide effects received: and that is optional.

XXXI.

VRIHASPATI:—Or it should be given to the poor, the aged, or the blind, to women or infants, to afflicted, diseased, or childless persons, or other *needy* people: this is the primeval rule.

2. What is acquired and kept by those *members of a community*, or borrowed for the use of the society, or obtained as a present from the king, is common to all *the associates*.

“Diseased;” other than one afflicted *with pain* (*âtura*).

CHANDÉSWARA.

But HELAYÚDHA reads *acara* instead of *âtura*, and explains it *handless, or maimed*.

“Childless persons or other *needy* people;” under this are comprehended others (besides those enumerated), who should be maintained by the tribe, or by the company of artisans or the like, and whom the Sage contemplated.

CHANDÉSWARA.

“Poor;” indigent. Thus a gift to those whom it is necessary to maintain, is approved; and that should be in proportion to the respective shares of all the givers.

XXXII.

CÁTYÁYANA:—Whatever is borrowed on pretext of a community, and is consumed or dissipated for their own purposes, must be made good by those *who borrowed it*.

“What is borrowed on pretext of a community;” under pre-
tence

tence of the society ; by fraud in the name of the community ; must be made good by the borrowers.

The *Chintāmeni* and *Retnācara*.

“Dissipated,” or *aliened* ; given away. This is merely an instance shown ; the contracting of a debt is meant by the text. It is directed by VṚĪHASPATI (XXXI 2), that a debt contracted on account of the community, shall in general be discharged by all the members of it ; this text (XXXII) declares, that in some particular instances it shall not be so discharged.

XXXIII.

CĀTYĀYANA :—All those who are admitted into a society of *traders*, or company of artisans, or other community, share equally the previous stock and the debts.

Even those who are subsequently admitted, by general consent, into a society or other community of traders or the like, become sharers of the actual stock and debts, or of the capital invested in commerce and so forth.

The *Chintāmeni* and *Retnācara*.

It should be understood, that, if an agreement be made by general consent, at the time of admission, in this form, “ I have no share in the gain, loss, or other occurrence prior to admission ;” in that case he does not partake of the gain, loss, or the like. This is consistent with reason.

XXXIV.

CĀTYĀYANA :—Thus also he who remains in the society is a sharer in *all* matters relating to provisions, partible stock, gifts and duty ; but he who forfakes it, is entitled to no share.

The term, *all* matters, or *acts*, is referred to the other terms severally. “ Provisions,” or eatables ; sweetmeats and the like.

“Partible stock;” grain and the like. “But he who forsakes it, is entitled to no share;” he who forsakes the society, or withdraws himself from the community, on motives of his own, is not entitled to any share. The *Retnâcara* and *Chintâmeni*.

The meaning is this: of what is consumed by the society, shares are received by those only who remain in the community; and that which is distributed shall be shared by them only; not by those who are out of the society at the time of partition, on the grounds of their having been members of it when the effects were acquired. Moreover, if any thing be given, or any other legal act be done by any one member of the community, all the members of it are partakers of the act: and in the case of a gift made by one, it is a valid gift on the part of the whole community, provided the donation were made by him while he was a member of it.

These engagements of members of communities have been propounded; the mutual agreements of two persons should also be discussed. For instance, “if thou givest *that*, then I will give *this*; if thou dost *that*, I will do *this*; if thou dost *that*, I will give *this*; if thou givest *that*, I will do *this*:” such, and of many other sorts, are mutual promises. In these instances, “if,” or “when,” denoting a contingency, and a contingency implying two parts, both payment and non-payment are signified. Thus, (from the general construction of words mentioned in successive order,) by expressing, “in case of thy gift *being delivered*, my gift *shall be delivered*,” it is in effect declared, “my gift shall be withheld, in case thy gift be withheld:” therefore, the withholding of the gift is stated as one part of the contingency; and hence no other penalty is directed. But where the promise is a general declaration, ascertaining work to be done, and wages to be paid, in this form, “thou shalt perform the work, and I will pay the wages;” in that case, since non-performance of work and non-payment of wages are not expressed, another penalty is proper, *in the event of a breach of promise on either part*.

“If thou shouldst do *that*, I would do *this*;” such a declaration is no promise: for the conditional future tense expresses something dependent on an event, and implies *possible* non-performance.

CHAP. III.

ON

RESCISSION

OF

PURCHASE AND SALE.

SECT. I.—*On Rescission of Purchase.*

AFTER breach of engagement among societies, Rescission of Purchase and of Sale is propounded by MENU, to determine any breach of engagement between a buyer and seller: both these titles are discussed in this place.

I.

VRĪHASPATI:—This rule of decision in regard to promises has been concisely delivered: hear the contests usually arising on purchase and sale.

2. Two kinds of property are universally acknowledged, immoveable and moveable; when a contract of sale is made, both are called by the name of vendible property.

Literally, at the time of the contract; that is, during the making of the sale. Both moveable and immoveable effects are called by the name of vendible property (*pañya*) or commodity.

II.

NÁREDA :—Property, in this world, is of two kinds, immoveable and moveable; and, in the laws of purchase and sale, both are called vendible property.

Thus cows and the like, though bought for a price, are described in the chapter on Inheritance, and in other places, by the name of hereditary property; but in contests respecting purchase and sale, by the name of vendible property: and, whenever the term of vendible commodity shall be used in this chapter, by that term must be understood the thing concerning the purchase of which a contest subsists. This is implied.

Therefore, in saying “let a buyer himself examine the commodity,” it is not understood of an ox or the like hired to transport the goods purchased, though the cattle were in fact *once* bought.

III.

NÁREDA :—The rule of delivery and receipt is held by the wise to be six-fold; by tale, weight, measure, work, beauty, and splendor.

“By tale;” as faufelnuts and the like. The *Retnâcara*.

And this is grounded on the usage of buying and selling faufelnuts and other commodities by the tale. Under the term “and the like,” are comprehended shells, *fagots* of small wood, and similar articles.

“By weight;” as gold and the like. “By measure;” as grain and other things. The *Retnâcara*.

This also is grounded on the usage of buying and selling grain and the like by measure, such as the *pâyya* and the rest: in some instances grain is also *sold* by the weight. Other lawyers remark, that cloth and similar commodities are measured by the cubit or the like.

“By

“By work ;” oxen and other cattle are sold by the work which they perform, in carrying burdens, and so forth.

The *Retnâcara*.

An ox, which carries the weight of two thousand *suvernas*, is valued at so much ; one able to carry a burden equal to four thousand *suvernas*, is valued at so much : such is the general usage. Other lawyers explain, “by work,” by the load ; as much cleft wood as is portable by one person, and so forth.

“By beauty ;” handsome women and the like sold according to their personal charms.

The *Retnâcara*.

A handsome female sold by beauty, according to the difference of complexion. Other lawyers explain it, stones and the like sold by their beauty.

“By splendour ;” pearls, *gems*, and the like, sold by their lustre.

The *Retnâcara*.

IV.

NÁREDA :—He who is dissatisfied with his purchase, after buying a commodity for a *just* price, is called a rescinder of purchase, *which* is a title of judicial procedure.

That man who is dissatisfied is named the rescinder of purchase, a title of law ; meaning him who rescinds a purchase. But other lawyers hold, that the title of law is *something* appertaining to that man : his dissatisfaction is, in law, termed rescission of purchase ; for his discontent is the cause of litigation.

The same legislator declares what should be done in case of rescission.

V.

NÁREDA :—If a man, having bought for a just price any cloth or other consumable commodity except seed-grain, should suspect that he had made a bad purchase, he may return it on that very day to the seller, unless it be diminished.

2. The buyer, who returns it on the second day, shall give *the seller* a thirtieth part of the price; on the third day, twice as much, *or a fifteenth*: and, after that, it is absolutely his own.

“A thirtieth part of the price;” the thirtieth part above the price: and this relates to cloth and other commodities liable to destruction by use, except seed grain. The *Retnācara*.

Others say, that, if the buyer return it on the second day, the seller shall receive the thirtieth part of the price.

“Twice as much:” twice a thirtieth; that is, a fifteenth, according to the opinion of other lawyers. After that *period*, the purchase must not be rescinded.

In the *Mitācsharā*, a reason for the exception is mentioned; “because a distinct period will be directed for returning seed-grain and the like.” In the *Retnācara* it is said, “this relates to cloth and other commodities liable to destruction by use, except grain.” In the *Chintāmeni* it is observed; “this rule is applicable to those things for the examination of which three days are allowed.” The following text declares the time allowed for the examination of grain and other commodities:

VI.

YÁJNYAWALCYA:—The time allowed for the trial and examination of feed-grain is ten days; of iron, one day; of *bulls and other* beasts of burden, five days; of *pearls* and gems, seven days; of female slaves, one month; of milch cattle, three days; of male slaves, half a month.

“Seed;” grain to be sown and the like. “Beasts of burden;” bulls and other cattle. “Gems;” pearls and precious stones. “Women;” female slaves. “Milch cattle;” female buffaloes and the like. “Men;” male slaves. For the examination of these (namely of feed and the rest) the time allowed is, in their order, ten days, *one day*, and so forth. The sense expressed is, that,

that, if rescission be proposed, on the discovery of a defect when the seed or other grain is examined, the purchase may be cancelled within ten days ; but not later.

VII.

MENU :—A man who has bought or sold any thing in this world, *that has a fixed price, and is not perishable, as land or metals*, and wishes to rescind the contract, may give or take back such a thing within ten days*.

But this text of **MENU** relates to all things bought without examination, since there are texts repugnant to a rescission of the contract on the tenth day, and so forth. *The Retnâcara.*

The text of **MENU** concerns things not *very* liable to destruction by use, as a house, a field, a car, a chair, a bed and the like, excepting iron and other things, *for the trial of which a different period is allowed.*

VIII.

CÂTYÂYANA :—If a man, having bought vendible things, as milch cattle and the like, which have no blemish, repent of his bargain, and give them up within the limited time, *and before they are delivered to him*, he must pay a tenth part of the price to the owner.

2. But if a buyer have received the commodity sold, and repent of his purchase, **BHRĪGU** has ordained that he shall pay a sixth part of the price when he returns it.

“ If he have received the commodity ;” if he have taken possession of it. *The Retnâcara.*

The inconsistent penalties of a sixth and a tenth part are reconciled,

x 4

* See the commentary on this text quoted again at V. XXIII.

conciled, by MISRA and CHANDÉSWARA, from the circumstance of the buyer's having, or not having, received the commodity. Thus, if the thing which he bought remained with the vender, he forfeits a tenth part of the price; if he carried it home, he forfeits a sixth of the price.

Should it be said, this is inconsistent with the forfeiture of a thirtieth part; the answer is, there is no inconsistency: for the penalty of a thirtieth part is established in the case of things other than milch cattle and the like; and the forfeiture of a tenth part is established in the case of milch cattle and the rest.

CHANDÉSWARA remarks, that both these texts of CĀTYĀYANA relate to things bought without examination.

IX.

YĀJNYAWALCYA:—A return of commodities, once bought, shall not be made by a merchant who well knows the profit and loss on vendible things: if he obstinately persist in returning them, he shall pay a sixth part as a fine *to the king*.

A return of commodities, bought after examination, shall not be made by a purchaser, who perceives not any advantage, after making the purchase, *from rescinding his contract* as one made for a less quantity than what the price bore at the time of the purchase; nor shall the contract be rescinded by a vender, who perceives no loss on the commodity, in consequence of the rate exceeding the market price. But the buyer and seller may rescind the contract, if they perceive such gain or loss. The text is delivered for the sake of this exception. The *Mitācsharā*.

In the *Retnācara* a similar exposition is given. Thus, after the purchase of a commodity examined, if the purchaser think it bought for too high a price, he may return it, after ascertaining the excessive price; but not without ascertaining it. *Consequently*, the purchase even of a commodity examined may be rescinded.

In the *Calpateru* the text is read, *abhi jānatā*, well acquainted with the profit and loss on vendible things, instead of *avi jānatā*, not

not perceiving profit or loss on vendible things; and the same reading occurs in some places of the *Chintāmeni*. According to that *reading*, if a thing be knowingly bought at a high price from the exigency of affairs, the contract cannot be afterwards rescinded. But the *Retnācara* rejects that reading, because it disagrees with *copies of YÁJNYAWALCYA*, and with the *Pracúsa*, *HELÁ-YUDHA*, and the *Párijāta* *. In fact there can be no return of a commodity voluntarily purchased at a high price, in a cheap season, by one who actually knew the price to be great.

Rescission of contract and a penalty have been propounded in the case of a commodity bought without trial. In the case of commodities bought after examination, rescission has also been allowed in consequence of discovering the price to be excessive, and so forth. What is to be done in regard to the purchase of a thing examined, if no *increase or diminution* of price be discovered, is now stated.

X.

NÁREDA:—A trader, skilled in the value of vendible articles, shall not return those which he has bought: it is his duty to know what may be the loss on each article, and what the gain.

2. A buyer ought at first himself to inspect the commodity, and ascertain what is good and bad in it; and what, after such inspection, he has agreed to buy, he shall not return to the feller, *unless it had a concealed blemish*.

If he bought a thing for a great price, at a season when the *general* rates were moderate; or a damaged article, for the price of undamaged goods; may he not justify the rescission of the contract? Therefore the Sage says; “it is his duty to know what may be the loss on each article, and what the gain.” Consequently, the price should be verified, and the commodity examined, before the purchase be completed,

“ And

* I have nevertheless retained the version of the text, as it is read by LACSHMID'HERA, author of the *Calpateru*. T.

“And what, after such inspection, he has agreed to buy ;” what he has agreed to purchase, after trial and examination of its qualities and defects, deeming it such as he desired, and free from blemish, and so forth. Or the sense may be ; what he has agreed to buy, having approved it after discussing the price.

XI.

VRIHASPATI :—Let a buyer himself examine the commodity, and show it to others ; when, after inspection and approbation, he has accepted it, he shall not return it.

“And show it to others ;” to confirm the examination. But if he wish to return a thing so examined, and do not show an excess in the price, which was unknown to him at the time of purchase, he shall pay a fine equal to a sixth part, as directed by **YÁJNYAWALCYA**. Such is the ultimate sense of the text.

XII.

VYÁSA :—Grass, wood, bricks, thread, *common* grain, *not to be sown*, wine, or other liquids, cloth, base or precious metals, ought to be inspected immediately.

“Grain,” except seed ; for **YÁJNYAWALCYA** has declared, that the time allowed for examining seed-grain is ten days.

XIII.

NÁREDA :—Milch cattle should be examined within three days ; beasts of burden, within five ; but the examination of pearls, gems, and coral, must be within seven days ;

2. Of male slaves, within half a month; of females, within one month; of *rice and all other* feeds, within ten days; of iron, and wearing apparel, within one day.

Since one day is allowed by NÁREDA for the inspection of wearing apparel, the word "immediately," in the text of VY-ÁSA, should be taken in the same sense. CHANDÉSWARA.

It should not be said, that the term 'one day' may signify immediately (*sadyah*); because one is necessarily denoted by this term, and *sadyah* is explained by AMERA, at the instant. The word *sadyah*, ("immediately,") sometimes signifies on that day; but the term 'one day' does not always signify immediately. However *sadyah* is formed by the suffix *dyah*, which conveys the sense of day.

If it be said, that, *in this text*, the direction for milch cattle to be examined within three days is superfluous, because it has the same meaning with the former text of NÁREDA, directing the buyer to pay a fifteenth part on the third day; or after that, the commodity is absolutely his own (V 2); some lawyers answer, "the former text lays down a special rule respecting things returnable in three days; but this text (XIII) allows three days for the examination of milch cattle;" and MISRA has remarked on the former text (V 2), that the rule is applicable to those things for the examination of which three days are allowed.

Others, relying on the opinion of CHANDÉSWARA, hold, that the former text concerns cloth and other commodities liable to destruction by use, and regulates the particular consequences according to the particular day *on which the commodity is returned*; but this text regulates the other *general* effect of any-how returning the thing within three days.

After declaring the time allowed for trial and examination, in the same order as delivered by NÁREDA, the following text is cited in the *Retnácara*:

XIV.

VRIHASPATI:—Within those times, if a blemish be
any-

any-where discovered in the commodity purchased, it must be returned to the seller, and the purchaser shall take back the price.

In this text there is a various reading, *sanjnyāyatē*, instead of *sanjāyatē*, be known or discovered: in both readings the sense is the same; for it is consistent with the reason of the law, and with the text of CĀTYĀYANA.

XV.

CĀTYĀYANA:— But, an unexamined commodity being bought, and afterwards proved to have a blemish, it must be returned to its owner within the limited time, and not otherwise.

“ The limited time ;” the period allowed for trial and examination of it. “ Not otherwise ;” not after the time allowed for inspection. The *Retnācara*.

Consequently, the purchase may be cancelled if a blemish be discovered within the time limited for examination ; but not if a thing bought, and placed in the buyer's house, be accidentally damaged within the time allowed for detecting blemishes.

Is not this repugnant to the text of MENU (Book II, Ch. II, v. LXI) ; for, by saying it shall never be sold, the sale is declared illegal ; and that shows a thing to be returnable even after the time allowed for inspection ? If it were sold with a concealed blemish, then it may be returned even after a very long time. So the *Chintāmeni*.

Consequently, if it were sold with a blemish known to both parties *, it may be returned within the time limited for inspection ; if it were fraudulently sold with a concealed blemish, it may be returned at any time.

One commodity mixed with another of inferior value, as saffron adulterated with safflower, *shall never be sold as unmixed* ; nor a bad commodity, or one which has some blemish different from what

* So the MS. I suspect an error ; the author's meaning must surely be, sold with a blemish unknown to both parties. T.

what is disclosed ; nor less *than agreed on* ; nor a thing kept at a distance, that its qualities and defects may not be known ; nor a thing concealed, or covered with a cloth. The *Retnâcara**.

But the author of the *Chintâmeni*, after stating all this, adds, when any one of these *objections to the purchase* is discovered, the thing may be returned even after a very long time.

XVI.

NÂREDA:—But a mantle, that has been worn, and is tattered and soiled, yet is bought with those known blemishes, cannot be returned to the seller.

The text should be supplied ; “ yet is bought with those *known* blemishes.” From parity of reasoning, it may extend also to other goods bought with such blemishes. The *Retnâcara*.

SECT. II.—On Rescission of Sale.

XVII.

NÂREDA:—When a vendible thing, sold for a *just* price, is not delivered to the purchaser, this is called Non-delivery of a thing sold, a title of judicial procedure.

That thing, which is not delivered, is called by this technical title. Or the relative is an epithet of the thing sold ; the non-delivery of that *vendible* thing which is sold, but not delivered, is called a title of law. Or the terms may be uncompounded ; *sale and non-delivery*. The same is intended by MENU in the term “ rescission of sale.”

The following text declares the rule in this case :

XVIII.

* In a gloss on the text of MENU above cited. (Book II, Chap. II, v. 61).

XVIII.

NÁREDA:—He then who, having sold vendible property for a just price, delivers it not to the buyer, shall be compelled, if it be immoveable, to pay for any subsequent damage, *as the loss of a crop and the like*; and if moveable, for the use and profits of it.

“Subsequent damage;” as loss by trespasses *of cattle* on the crop, and the like. “The use;” *literally*, the work, as the carriage of burdens and so forth. “Profits;” as milk and the like. The *Retnácara*.

The *Chintámeni* gives a similar exposition. It must be observed, that the produce of land or the like ought also to be given. Some hold, that *csbaya*, signifying inhabited ground, implies the rent of a habitation, conformably with the sense of the root *csbi*, which signifies to inhabit, as well as to go. But others say, that *csbaya* denotes the loss of an expected crop, or the loss of house-rent and so forth; and that this is meant in the gloss of the *Chintámeni*, by the term “loss of a crop or the like.”

XIX.

NÁREDA:—Should the value be diminished *in the interval*, he shall deliver it together with the difference of the value: such is the rule for merchants in the same place; but, among those who trade to foreign countries, the foreign profit must be made good *to the purchaser*.

If gems, or the like, sold but not delivered by the vender, sink in value; if their price be gradually diminished; they shall be delivered to the purchaser with the difference of the value. *But*, among those who trade to foreign countries, (among those who are accustomed to travel to other countries *for the purposes of commerce*),

commerce,) the vender shall make good the profit which might have been obtained by going to a foreign country.

VÁCHESPATI MISRA.

The same exposition is delivered in the *Retnácara*. But others hold, that the rule concerning immoveable and moveable effects is stated generally in the first text (XVIII); and a particular rule is delivered in the second verse (XIX); for it is expressed conditionally. Thus, should the value of a thing, whether moveable or immoveable, be diminished, the difference of the value must be made good, as well as the damage and so forth; as directed in the first text: and if any one of those things were fit for foreign trade, the foreign profit must be made good, as mentioned by MISRA; not the charge of transport and the like in the same country. It should not be objected, that almost all cattle and merchandise are fit for foreign trade. It is implied, that the purchaser bought the thing for that purpose, *or that* the cattle or goods were actually employed in foreign trade.

XX.

NÁREDA:—This rule has been declared for vendible commodities, of which the price has been paid *or tendered*; but where it has not been paid *or tendered*, there is no injury to the buyer by *delaying the delivery*, unless there have been a special agreement *as to the times of delivery and payment*.

If the seller had received the whole price, he must pay for the damage and so forth; but there is no offence in his keeping the commodity to obtain payment. MISRA.

Consequently, it is an offence to detain it knavishly, without a sufficient cause.

XXI.

YÁJNYAWALCYA:—He who, having received the price of a thing fold, delivers not that thing to the

the buyer, shall be compelled to deliver it, together with interest; or, among those who trade to foreign countries, with the foreign profit.

“Interest” must be understood to be an increase on account of the difference of price. But, in a gloss on the text of NÁREDA, an opinion is advanced in the *Mitácshará*, that the profit which would have arisen from the sale of the commodity must be made good, or twice or thrice the rent of a house or the like, or the rate of *interest* directed under the title of Loans; at the option of the buyer.

XXII.

VISHNU:—He who, having received the price of a thing sold, delivers not that thing to the buyer, shall be *made to pay him the value of it, with damages, and* be fined a hundred *panas* of copper to the king*.

This text also has the same import with that of NÁREDA; but further directs an amercement.

XXIII.

MENU:—A man who has bought or sold any thing in this world, *that has a fixed price, and is not perishable, as land or metals*, and wishes to rescind the contract, may give or take back such a thing within ten days†;

2. But, after ten days, he shall neither give nor take it back: the giver, or the taker, *except by consent*, shall be fined by the king six hundred *panas*.

He

* I insert the whole text, as it is cited in other works; a part of it seems to have been here omitted by mistake. T.

† The first verse has been already cited (VII).

He who wishes to rescind the contract, (who wishes it annulled, who repents of it,) may give back *the price, or the commodity*, to the other; *that is*, may return it. The buyer may give it back to the seller; or the seller may take it back from the buyer. This regards grain to be sown, and things which are not perishable, as a house, land, a car and the like, excepting iron, beasts of burden and the rest. The *Retnâcara*.

For the time allowed for the trial and examination of iron and the rest, is limited by particular texts (VI, &c.); and in some instances it is limited to three days. A period of ten days is allowed for rescinding the purchase of a house or of land; from *the parity of the case*, the same should be allowed for the rescission of sale: and it is equitable that the period should be limited to three days for the rescission of sale in the case of iron or the like, as directed *for the rescission of purchase* (VI).

He who has bought or sold any article in this world, that has a fixed price, and is not perishable, as land, or copper, or the like, and repents of the contract, thinking it ill made, may return the goods within ten days, or may take back the thing sold.

CULLÚCABHATTA.

This text may relate to things purchased without examination; for it seems to be so established in the section on Rescission of Purchase: it may also be understood of a sale made by mistake.

But other lawyers maintain, that this text, and what is suggested by the text of YÁJNYAWALCYA (VII), may also relate to a thing bought after examination. It is the buyer's own fault if he examine not the commodity. But *the rule that under certain circumstances* a thing cannot be returned to the seller, takes effect after ten days and so forth. Yet, even in that case, it should have been inspected and approved (XI), to obviate *the risk of concealed blemishes*. However, under the rule regarding commodities inspected and approved (XI), if an agreement be formally made to this effect, "this is approved by me; even though blemished, it shall not be returned;" such a commodity can on no account be returned. This is intended; and the text of MENU (XXIII) supposes such an agreement.

"Six hundred" (XXIII 2); six hundred *panas*.

CULLÚCABHATTA and CHANDÉSWARA.

"The giver or the taker;" the buyer giving it back, or the
VOL. II. Y seller

feller taking it back. According to the *Retnâcara* and the rest, this text should properly be restricted to things bought without examination.

XXIV.

MENU :—By this law, in all business whatever here below, must the judge confine within the path of rectitude a person inclined to rescind his contract of sale and purchase.

“All business whatever:” by this expression, the law concerning rescission of purchase and sale is extended to other worldly affairs. Consequently, there is no offence in rescinding, within ten days, a contract for a loan, for an association, or for service, or a promise of wages, or the like. But, after that period, those promises may not be broken; *or if they be retracted*, a fine of six hundred *panas* must be paid to the king. This is consistent with the opinions of **CHANDÉSWARA** and **CULLÚCABHATTA**; but a fine may be inferred without a particular rule.

“By this law” (XXIV); by the law declared under the head of Rescission of Sale.

XXV.

CĀTYĀYANA :—He who accepts not a thing which he has bought and secured, and he who delivers not, free from blemish, *a thing which he has sold*, shall each take back his own property, forfeiting a tenth part of the price.

“Secured;” *literally*, received; brought into his power.

The *Retnâcara* and *Chintâmeni*.

“Each shall take back his own property;” the buyer shall take back the price; and the seller shall take back the commodity: for, under the authority of the text, the right of property has not been transferred in this case. But the Sage propounds a distinction in regard to a thing of which possession has not been taken.

XXVI.

XXVI.

CĀTYĀYANA:—Yet, if the thing were not secured, though a formal contract were made, and the purchaser accept it not, the same rule *for rescission within ten days* prevails; but, after ten days, the contract may not be rescinded.

“A formal contract;” an attested writing or the like. Although such a contract be made, if possession of the commodity have not been secured, the purchaser does not forfeit a tenth part *of the price*, on returning it within ten days; but, after that period, a thing, of which the blemish was known, cannot be returned. The *Chintāmeni*.

The meaning is, that if a mere agreement for purchase were made, and the goods be not accepted, there is no penalty of a tenth part *of the price*; but, after the limited time, nothing can be returned, even though a mere agreement had been made. As for returning a blemished commodity, even after the limited time, that is restricted to the case of a concealed blemish; it is not permitted if the blemish were disclosed at the time of the sale.

XXVII.

NĀREDA:—Should the thing fold be injured, or burned, or carried away, *after the time when it ought to have been delivered*, the loss shall fall on the vender, who delivered it not when he ought.

“Who delivered it not when he ought;” who, without rescinding the contract, tendered it not, even though a demand were not *formally made*: *in this case the loss falls on the vender*, unless the commodity be injured by the act of God or of the king. But, after a demand, the loss falls on the vender, even though the injury happen by the act of God or of the king; and he must make it good to the purchaser.

XXVIII.

YĀJNYAWALCYA: — Should a commodity sold, but not delivered on demand *with tender of payment*, be injured by the act of GOD or of the king, the loss shall fall on the vender.

Again: if the vender, without rescinding the contract, deliver not the commodity, though demanded by the purchaser, and it be injured by the act of GOD or of the king, that loss falls on the vender; therefore another unblemished commodity, similar to that which has been damaged, must be delivered to the buyer.

The *Mitācsharā*.

It appears from the mention of a demand, in the text of YĀJNYAWALCYA, that the vender shall not be compelled to make it good, if a thing undemanded be injured by the act of GOD or of the king. As a demand is not specified in the text of NĀREDA (XXVII), it should seem, that the vender must make good *the value of the thing*, though *it had not been demanded*, if it be injured by his own negligence, without the act of GOD or of the king; but the vender shall not be compelled to make it good, if destroyed by the effect of time, before it be demanded.

Yet, if a buyer, repenting of his purchase, accept not the thing, and it be afterwards destroyed by the act of GOD or of the king, the loss falls on him.

XXIX.

YĀJNYAWALCYA: — If the first vendee refuse to receive the thing sold, it may be sold to another; and if a loss arise by the fault of the vendee, on him alone shall it fall.

Should the first buyer, repenting of his purchase, refuse to receive the commodity, it may be sold to any other purchaser who may offer. The first hemistich is thus expounded in the *Mitācsharā*.

Here no reference to the time limited for rescission of purchase is hinted by the Sage or Commentator: and according to the

Mitācsharā,

Mitácshará, the last hemistich establishes that the loss falls on the vendee, if no other purchaser offer for that thing, and it be destroyed by the act of God or of the king; for the loss happens through the fault of the purchaser in refusing to receive the commodity.

XXX.

NÁREDA: — He who, having shown *a specimen of* property free from blemish, delivers blemished property, shall be made to pay double the price *to the vendee*, and a fine to the same amount.

By directing that double the price shall be paid, if blemished property shall be sold, after showing unblemished goods to determine the price, the necessity of delivering the blemished property is denied. But the Sage has not declared that the unblemished thing which was shown shall be delivered.

XXXI.

VRĪHASPATI: — The dishonest man, who sells a commodity knowing its blemish, *but not disclosing it*, shall pay double the price of it *to the vendee*, and a fine of equal amount *to the king*.

“ The price of it ;” the word “ it ” bearing an apparent allusion to what has preceded, and “ sells ” signifying ‘ gives after receiving a price,’ the allusion is to the price proposed; for NÁREDA has stated it in a single phrase: and the word price, in his text (XXX), signifies the stipulated *consideration*, and cannot be applied in a secondary sense to *the value of the commodity delivered*. Or it may be thus explained: since the text of NÁREDA directs payment of double the price, if blemished property be sold after showing unblemished goods; twice the value of the commodity must be paid, if blemished property be shown and delivered without disclosing the blemish; for in the text of VRĪHASPATI the word “ it,” being referred to the principal subject, alludes

alludes to the commodity which was originally proposed for sale.

“Who sells a commodity (XXXI);” who sells it without disclosing the blemish. The *Retnâcara*.

XXXII.

YĀJNYAWALKYA :—If a man sell to one what had been *already* sold *by him* to another, or a blemished commodity as unblemished, the fine shall be double the price of the thing.

Again ; he who sells to one a thing already sold to another, or vends a blemished commodity, of which he conceals the blemish, shall be fined in double the price of that commodity. This is implied by the interpretation first stated in the exposition of the first hemistich, as delivered in the *Mitâcsharâ*.

XXXIII.

NĀREDA :—He who sells a commodity to one man, and delivers it to another *unauthorized to receive it*, shall also pay double the price, and a fine to the same amount.

After agreeing for the price of that thing with one man, if a man afterwards relinquish it to another, he also shall be compelled to pay double the value, and a fine to the same amount.

The *Retnâcara*.

In this case, the first contract shall prevail (Book II, Chap. ii, V. 28). To whom shall twice the value be paid? To him who does not obtain the chattel purchased. This should be understood as the sense of the text, because no person is specified.

Here a difference occurs in the *Retnâcara* and *Mitâcsharâ*, one stating the penalty at double the value of the thing, the other at double its price. It may be reconciled by supposing the price and the value of the thing to be the same.

XXXIV.

XXXIV.

NĀREDA : — But if a vendee refuse to accept the commodity which he has bought, when it is offered, the vender commits no offence if he sell it to another.

XXXV.

YĀJNYAWALCYA, cited in the *Retnācara* and *Chintāmeni* : — He shall be compelled to repay two-fold a sum received as earnest.

What is voluntarily delivered to the seller, by the purchaser, for the purpose of ratifying the bargain, is meant by the word “earnest;” and the vender must pay twice the amount if he afterwards cancel the sale. *The Retnācara.*

Here it is not directed that twice the value of the thing shall be recovered, but twice the amount deposited to complete the bargain. This is the full purport of the text.

XXXVI.

VYĀSA : — By him who has given earnest, and appointed no specifick time for delivery, it shall be forfeited if he refuse to accept the commodity when offered.

The amount which the vendee has given as earnest on account of the purchase, is forfeited to the vender, if the buyer refuse to receive the commodity when tendered. Therefore that amount shall not be recovered by the purchaser from the vender.

The Retnācara.

In this case, it appears that forfeiture of the amount paid as earnest is the only penalty *imposed* on the vendee. But the text of YĀJNYAWALCYA (XXXV) being thus expounded in the *Chintāmeni*, “what is given by the vendee, and received by the
vender

vender promising to sell his own vendible property, is received as earnest, and twice its amount shall be paid to the purchaser by the vender repenting of the sale ;” what is deposited to complete the bargain, is denoted by the word earnest.

This text (XXXV) is placed by YÁJNYAWALCYA himself under the title of Loans and Payment, and is expounded by VIJNYÁNÉSWARA as relating to pledges*.

XXXVII.

VKĪHASPATI :— What has been sold, at a low price, by a man inebriated or insane, or through fear, or by one not his own master, or by an idiot, shall be given back, or may be taken *forcibly* from the buyer.

“ Shall be given back *by the purchaser of it ;*” the text should be thus supplied. “ At a low price ;” this is connected with all the terms of the sentence : thus the meaning is, “ what has been sold, at a low price, by a man inebriated or the like.” Consequently, *if it be* sold for a fair price by a man inebriated, *the sale* is valid ; and *if it be* sold at a low price by a man sound of mind, *the sale* is *also* valid. Thus some explain the law : but that inference is wrong ; for, even the sale of a thing which ought not to be sold might be valid, *though made* by a man intoxicated. Therefore the full sense is, that a sale made by mistake, for a low price, is void : and in this case, as sixteen void gifts are declared under the title of Subtraction of what has been given, so, from parity of reasoning, there may be sixteen void sales. Thus others expound the law.

XXXVIII.

NĀREDA :— The purchase and sale of all commodities by merchants are made with a view to gain ; and that gain arises from the receipt of the price, be it great or small :

2. There-

* Book I, v. CXXIV.

2. Therefore, *when a price has not been stipulated*, let some merchant, who knows the price of commodities, fix it according to place and time: let him not act crookedly; the straight path is the best in all mercantile business.

If a thing be sold without stipulating its price, let a merchant determine it according to time and place, and fix a proper value: let him not act crookedly, or fraudulently; let him not deviate from propriety in regard to the price. CHANDÉSWARA.

XXXIX.

YÁJNYAWALCYA: — He who falsifies scales, market rates, measures, or standard coins, and he who uses them, shall both be forced to pay the highest amercement.

“Scales,” or balance; the scales and beam. “Market rates,” (literally, commands;) the king’s written precept *regulating market rates*. “Measures;” as a *prast’ha*, a *dróna*, and the like. “Coins;” money stamped; as a *bherma*, a *nishca*, or the like. Both he who falsifies these, (who makes them different from the general standard of the country, whether less or more, or stamps money, such as a *bherma* and the like, in an unusual manner, or alloys it with copper or other *base metal*,) and he who uses them knowing them to be false, shall each be fined in the highest amercement. VIJNYÁNÉSWARA.

The Sage propounds a law concerning the trial and examination of coins.

XL.

YÁJNYAWALCYA: — That examiner of coins who declares bad money good, or good money bad, shall be compelled to pay the highest amercement.

He

He again who, on examining coins, declares a coin to be good, which is *over* alloyed with copper or the like, or who declares a true coin to be false, shall be fined in the highest amercement.

The *Mitácshará*.

A similar fine might be imposed on those who declare true weights or measures to be false; but it is not directed in this case, because their offence is less than that of an examiner of coins, by reason of the grossness of weights and measures compared with coins.

XLII.

YÁJNYAWALCYA:—But he who cheats in weights or measures to the amount of an eighth part, shall be forced to pay a fine of two hundred *pan'as*; and proportionably if *the fraud be* greater or less.

He again who defrauds *another* by false weight or measure, to the amount of an eighth part of the vendible property, whether it be grain in the husk, cotton, or the like, shall be fined in two hundred *pan'as*; and if the amount of the fraud be more or less, the fine also shall be proportionably more or less.

The *Mitácshará*.

In this case, if the fraud be less than an eighth part, the amercement shall be less; if the fraud be greater, the amercement shall be higher. Thus some expound the law.

XLIII.

YÁJNYAWALCYA:—A man who adulterates vendible property, such as drugs, oil, salt, perfumes, grain, sugar, or the like, shall be compelled to pay sixteen *pan'as*.

“Drugs;” medicinal substances. “Oil;” *comprehending* clarified butter and the like. “Perfumes;” as *usíra*, or the root of *virana* grass*, and the like. The expression, “or the like,” comprehends

* Aromatick Andropogon.

comprehends *asafoetida*, pepper, and other things. The fine for mingling inferior substances with these, for the purpose of sale, is sixteen *panas*.

XLIII.

YÁJNYAWALCYA:—The fine for disguising the nature of earth, leather, beads, thread, iron, wood, bark, and cloth, is eight times the amount of the sale.

Giving to earth and the rest, for the purpose of sale, the *appearance of a thing of a precious nature*, which it *really* is not; or making it to resemble a thing of a valuable nature, by the addition of a different odour, colour, or juice. For instance, counterfeiting fragrant *ámalaçá* * by adding the odour of the flower *mellicá* † to a piece of earth; or the skin of a tiger, by colouring the skin of a cat; or a ruby, by tinging a glass bead with another hue; or filken thread, by giving a glossy appearance to cotton thread; or silver, by polishing black iron; or sanders wood, by adding the odour of that to the wood of the *bilwa* ‡; or passing the bark of the *caccôla* for cloves; or counterfeiting wove silk, by raising a glossy appearance on cotton cloth: *in such cases*, the fine is eight times the value of the commodity, whether earth, leather, or the like, made to resemble *another thing*, and sold *in its stead*. The *Mitácshará*.

Others hold, that the fine is eight times the value of the fragrant *amalaca*, which it was called when sold, and which was expected by the purchaser.

XLIV.

YÁJNYAWALCYA:—The fine also for one who delivers, in pledge or sale, a thing changed under seal, or a fictitious valuable, is thus regulated:
2. For a thing worth less than a *pañ'a*, the fine is fifty *pañ'as*, for one *pañ'a*, a hundred; for two *pañ'as*,

* *Phyllanthus emblica*.

† *Nyctanthes undulata*.

‡ *Cratæva marmelos*.

pañ'as, two hundred ; for a greater value, a higher amercement.

“ Under seal ;” what has the cover of a seal *or the like*, as a casket. “ A thing changed ;” of him who fraudulently substitutes, by flight of hand, a casket full of beads, for another casket which he showed full of pearls, and of him who delivers, in sale or pawn, a fictitious valuable, as *counterfeited* musk or the like, “ the fine is thus regulated :” *or it will be now delivered ; or it should be thus understood*. If the price of the fictitious musk, or the like, be less than one *pañ'a*, the penalty for selling that fictitious article is fifty *pañ'as* ; if the price be one *pañ'a*, a hundred *pañ'as* ; if the price be two *pañ'as*, two hundred *pañ'as* : in like manner, if the price be greater, a higher fine should be inferred.

VIJNYÁNÉSWARA.

Others deem it proper to determine the fine, in a case of *fraudulent* sale, according to the number of *pañ'as* in the price received ; and, in the case of a *fraudulent* pledge, according to the number of *pañ'as* in the value of the commodity under the name of which the thing was delivered. Hence, although the fine be very heavy, it must be borne, because it is directed by the text.

XLV.

YÁJNYAWALCYA :—The highest amercement is *directed* for *traders* combining to maintain the price against labourers and artisans, *although* acquainted with the rise or fall of the price.

If traders, knowing an increase or decrease in the market rates as regulated by the king, conspire, through avarice, to maintain the *former* price against labourers, as washermen or the like ; and against artisans, as painters and the rest ; they shall be fined one thousand *pañ'as*.

The *Mitácshará*.

Others hold, that if labourers, artisans, and traders, knowing the rise or fall of the market rates, maintain the price, (that is, keep up the former rates,) they shall be fined.

XLVI.

XLVI.

YÁJNYAWALCYA : — The fine on traders who combine to obtain or to vend goods at wrong prices, is fixed at the highest amercement.

For those merchants again, who combine and stop foreign commodities, which they want at a wrong price, below the market rate, or who sell goods at prices exceeding the market rate, the fine ordained by MENU and others is the highest amercement.

The *Mitácshará*.

The meaning which results therefrom is, that a fine is directed for the offence of raising or lessening the market rates fixed by the king. The Sage declares, that purchase and sale should be conducted according to the prices regulated by the sovereign.

XLVII.

YÁJNYAWALCYA ; — Purchase or sale should be daily conducted according to the *market* prices, which are fixed by kings ; the difference thereof is the legal profit of traders.

If the king be near, according to that price which is fixed or regulated by him, should daily purchase or sale be conducted. The difference, or remainder, of those prices regulated by the king, is the only profit of traders ; for they may not alter the rates at their own choice.

The *Mitácshará*.

“ If the king be near ;” but if he be not near, the market prices should be regulated by his officers, and should be reported to him ; else there may be apprehension of wicked practices. On this account, the word king is used in the plural ; it has here a secondary sense, as in the expression “ the king moves,” meaning *him and his retinue*.

Distinct prices should be fixed for purchase and sale, according to the abundance or paucity of purchasers.

XLVIII.

XLVIII.

MENU:—Once in five nights, or at the close of every half month, or of every month, *according to the nature of the commodities*, let the king make a regulation for market prices, in the presence of *those experienced men*.

Once in five nights, or at the close of every fortnight, or of every month, according to the variableness, even tenor, or great uniformity of the price. In like manner, other occasions *for frequent or rare changes* may be also understood. The term “king” is here used generally; intending also the king’s officers.

XLIX.

YĀJNYAWALKYA declares the mode of regulating market prices:—On commodities of the same country, a trader, who buys and sells again immediately, may receive five in the hundred; but on those of other countries, ten in the hundred.

He who sells a commodity, which he obtained in the same country, may take a profit of five in the hundred, (that is, five *pañ'as* in one hundred *pañ'as*;) and if the commodity were obtained in another country, he may take a profit of ten *pañ'as* on the value of one hundred *pañ'as*, *that is*, if an opportunity of sale occur on the same day on which the commodity was received. But to him again who sells the commodity at a subsequent time, a greater profit must be allowed, because a greater time elapses. The market prices of various commodities should be so regulated by the king, in his own dominions, that there may be a profit of five *pañ'as* in a hundred on the regulated prices.

The *Mitācsharā*.

In this instance, another or a foreign country should not be assumed, from the description *quoted in a former chapter*; “where
5 language

language differs, or a mountain intervenes, &c.* ;” for that is barred by the condition mentioned, “who buys and sells immediately.” But a greater profit may be determined from a man’s own judgment, at the distance of a *Yojana* or the like from the market where the purchase was made, according to the difference of charges. Such is the meaning of the text.

What price may be taken by him who buys from a man to sell again, is determined after regulating the market prices for the purchase of commodities bought for consumption.

L.

YĀJNYAWALKYA :—Adding the incidental charges to the first cost of the commodity, let a price be fixed which shall be equitable both to the buyer and the seller.

So much as is the amount of charges incident to the fabrication or purchase of the commodity ; adding that, and the king’s taxes, and the charges of subsistence, of boat hire and the like, let a price be fixed : and in that case, if the seller happen to pay all the *estimated* charges, the buyer could obtain no *subsequent* profit ; or if the buyer kept all the *computed* profit, the seller ought not to be liable for any *previous* charges : therefore the price should not be so regulated ; but equitably both for the buyer and seller, to obviate excessive loss. Such is the sense ; and VIJNYĀNĒSWARA so expounds this text ; but it is cited by him with a remark, that “the Sage declares the mode of regulating the price of a foreign commodity.” Yet in fact it is only an example of the mode of regulating market prices ; the regulation should be formed on a man’s own judgment. Sometimes, from the price happening to rise, the profit is five hundred *pañās* on a hundred ; sometimes a man may even lose his capital : for the ruler of events governs the *fluctuations* of price. Consequently, the market rates should be fixed according to the prices of several countries, according to time, to *charges of safe custody* and the like.

LI.

LI.

NÁREDA :—The value of apparel once washed is diminished an eighth part ; twice *washed*, a fourth ; thrice *washed*, a third ; and four times washed, a half :

2. Afterwards a deduction of a quarter from the half-reduced value is successively made, until the fringe be wasted, and the cloth tattered ; *but* for tattered cloth there is no regulated deduction.

Here it should be observed that barter is in fact a sale ; and the same rules should be admitted in the forms of judicial procedure *for barter* and for sale, else the rules concerning it are nowhere delivered. But there is some distinction in law : delivery, after receiving a consideration any-how settled by way of price, is sale ; delivery, after receiving a consideration settled by way of equivalent, is barter. The equivalent should be of the same nature, and both things to be bartered should be equal in quantity ; or, if one be double of the other, or the like, they should be equal in pecuniary value : or more or less *under other circumstances*, at the option of the parties. Thus, in an exchange of *tila* or similar grain, for peas or pulse, the equal value, not the similar nature, is required : namely, such value as would arise from the sale of the article ; for instance, from exchanging *tila* or other grain, for shells, *pañ'as* of copper, silver coins, or the like. More may be determined by the mere exertion of a man's own intellect. *The law has been thus concisely propounded.*

CHAP. IV.

ON THE

OWNERS OF CATTLE

AND THEIR HERDSMEN.

SECT. I.—*On the Wages of Herdsmen, and on Losses of Cattle.*

HAVING propounded certain engagements suggested by the obligations of master and servant, MENU declares the law concerning disputes *arising from the fault* of a particular servant, *namely*, the herdsman.

I.

MENU :—I now will decide exactly, according to the principles of law, the contests usually arising from the fault of such as own herds of cattle, and of such as are hired to keep them.

“Cattle,” which become the subject of dispute.

The *Retnācara*.

Others explain the text ; “ I will decide exactly the contests between owners of cattle and *their* herdsmen.”

To determine suits concerning wages, the Sage declares the rule for them :

II.

MENU :—That hired servant, whose wages are paid
VOL. II. z with

with milk, may, with the assent of the owner, milk the best cow out of ten : such are the wages of hired herdsmen.

“ Whose wages are paid in milk ;” hired for a recompense so paid ; one whose wages are milk alone. He shall milk whichever is the best among ten cows. This milking of one cow in ten constitutes the wages of a herdsman hired for an allowance of food, clothes, and the like. The *Retnācara*.

In the *Chintāmeni* a similar exposition is given ; and it is added, in the *Menwarthamuḥlāvali*, that the herdsman must keep ten cows, for the milk of one, which is allowed him ; and he must also milk them. But others explain “ hired ” (in the latter part of the text) a servant : it follows, therefore, that an attendant on cattle also is a servant ; and the text coincides with that of *VRĪHASPATI* (Chap. I).

III.

NĀREDA :—For a hundred head of cattle, the annual wages of the herdsman are a heifer three years old ; for two hundred, a milch cow, and the milk of the whole herd every eighth day.

“ For a hundred head of cattle,” kept by him ; and so for two hundred. The term employed in the text signifies a heifer three years old. “ The milk of the whole herd ;” the milking of all the milch cows. The *Retnācara*.

IV.

VRĪHASPATI :—A servant, hired for attendance on the milch cattle of another, shall receive the whole milk every eighth day.

Here is an optional alternative ; the milk of one cow out of ten, or the milk of all the cows every eighth day, allowed as wages. But **NĀREDA** has further mentioned a heifer three years old. Neither is this a third case ; for it cannot alone suffice for wages. Nor

Nor should it be affirmed, that the milk of the whole herd every eighth day, the milk of one cow out of ten every day, and a heifer *year by year*, form the very same case; for there is no mutual reference between the *texts of these* sages. The milk of one best cow in ten, is equal to the milk of all the cows good and bad, at the end of every eighth day, or on every ninth day. In the case propounded by NÁREDA, since some of the hundred cows afford no milk, a heifer three years old is allowed as wages for attending such cattle. Thus others *explain the law*. From the special mention of one whose wages are paid with milk, another form is to be understood for the wages of one who is paid in money; and that is propounded in the chapter on the Non-payment of Wages and Hire.

NÁREDA declares what should be done by a herdsman:

V.

NÁREDA:—Let the owner each day commit his cattle to the charge of the herdsman, as soon as night ends; and in the evening, let the herdsman restore them *to their owner*, having seen them well satisfied with grafs and with water.

“Commit his cattle” to be kept *by the herdsman*. “Restore them after having seen them well satisfied with grafs and with water;” restore them after they have eaten grafs and drunk water. “In the evening,” let the herdsman restore them; let him deliver them to their owner, when little of the day remains.

The *Retnácara*.

The *Chintámeni* furnishes the same explanation. The meaning is, that the cows are intrusted to the herdsman for pasture and water only.

VI.

YÁJNYAWALCYA:—Let the herdsman restore the cattle each evening in the same condition in which he received them: for such as have been seized or
z 2
killed

killed through his negligence, he shall pay, if he had made an agreement for wages.

“Through his negligence:” *if cattle be seized or killed, through his own fault, the herdsman shall be compelled to make good the loss to the owner, if he had made an agreement for wages; that is, if wages had been stipulated. So the Mitâcsharâ: and the very same exposition is delivered in the Retnâcara.*

By this condition (“if he had made an agreement for wages”) it is intimated, that he who attends cattle without wages shall not be compelled to make good the loss; but to him who attends cattle as a favour, even the favour *conferred by him* is his hire: and he who, even without wages, makes a promise in this form, “I must inevitably restore the cattle,” shall also be compelled to make good the loss. Such should be the decision.

VII.

MENU and NÂREDA:—But he shall not be compelled to make it good when robbers have carried it away notwithstanding his exertions, provided he give notice to his master in a *proper* place and season.

“In place and season” proper for such notice.

The Retnâcara and Chintâmeni.

In fact the sense is this; not neglecting the proper place and season, if he give immediate notice to his master. CULLÚCABHATTA gives the very same *exposition*.

VIII.

VYÂSA:—The herdsman is not chargeable, if he be made captive, if the village be overpowered, or if the district be thrown into confusion, and any of the cattle be seized or destroyed.

“If

“ If he be made captive ;” if he be seized and detained, and so forth. The *Retnâcara*.

In fact, if the loss or injury happen through want of care on the part of the appointed herdsman, though he were able *to defend the cattle*, blame is imputable to him ; but not, if he were unable *to defend the herd*.

IX.

MENU :—By day the blame falls on the herdsman, by night on the owner *if the cattle be fed and kept* in his own house ; but if the place of their food and custody be different, the keeper incurs the blame *.

By day, if any fault occur in regard to the food and custody of cattle placed in the hands of the herdsman, the blame falls on him ; by night, if that happen to cattle restored by the herdsman and standing in the owner's house, it is the owner's fault ; but otherwise, (if they remain even at night in the herdsman's charge,) should any fault occur, the herdsman incurs censure. So CULLÚCABHATTA. In the *Retnâcara* the same exposition is given.

Greater wages should be stipulated for the herdsman, when the agreement is for attendance by day and night. The expression “ the blame falls on the owner,” is intended to denote that the herdsman shall not be compelled to make good the loss ; *that the fine must be paid by the owner*, if grain be damaged and the like ; and *that he must perform penance*, if the cattle die, and so forth.

VRĪHASPATI declares the mode in which a herdsman should defend cattle :

X.

VRĪHASPATI :—Let the herdsman preserve the cattle
z 3
from

* In Book I, an anonymous text is quoted which differs from this in the last hemistich ; “ but if another have the care of them at night also, the owner shares no blame.”

from danger of insects and reptiles, of robbers and tigers, and from falling into caverns or pits; let him defend them to the utmost of his power; let him call aloud for help, or give notice to his master.

Let him guard them from caverns or dens, and from pits or cavities. Let him preserve them, to the utmost of his power, from danger of insects or reptiles and the like. "Let him call aloud for help;" that is, let him make others hear *his cries*.

The *Retnâcara*.

"Let him defend them;" let him rescue them. If the cattle be in imminent danger from a tiger or the like, let him call people to assist in protecting them; or if that be impossible, let him instantly give notice to his master, that he may endeavour to save them. Thus others interpret the text.

XI.

NÁREDA :—If a cow be in danger, let the herdsman defend her to the utmost of his power; but if he be unable to *protect her*, let him hasten and give notice to his master.

2. A herdsman, who preserves not a cow from accidents, who gives no alarm and informs not his master when she is in danger, shall pay the value of her *to her owner*, and a fine to the king.

"Danger;" distress. "Let him defend her;" or in the case of his inability, let him call aloud *for help*. "Shall pay the value of her" (XI 2); literally, bear *the loss*: he shall pay for that cow.

The *Retnâcara*.

Cow is mentioned generally, comprehending other sorts of cattle.

XII.

MENU and NÁREDA :—The herdsman himself shall make

make good the loss of a beast which through his want of due care has strayed, has been destroyed by reptiles, or killed by dogs, or has died by falling into a pit.

“Has strayed;” or has been seized, or “destroyed.” By whom *destroyed*? The construction of the sentence answers that question; “by reptiles.” “Taken by himself;” (for CHANDÉSWARA reads *swahatam*, which is explained, taken by himself, instead of *śwahatam*, killed by dogs; this also comprehends seized by another. “Has died by falling into a pit;” or has died on a mountain of difficult access, or the like. “Through his want of due care;” of the care which should be used by a herdsman.

The *Retnācara*.

The cattle is lost through want of the care due from the herdsman; hence the blame imputable to that herdsman, is a cause for his making good the loss.

The *Chintāmeni*.

“Strayed;” passed out of sight. Has been “destroyed by reptiles, or killed or bitten by dogs, or has died by falling into a pit or the like.” And these are *only* examples; if a cow or other beast die, or stray, through want of such manly exertion for its preservation as is due from the herdsman, he must make it good to the owner.

CULLÚCABHATTA.

According to him, the reading is *śwahatam* with a palatine S; but, according to the *Retnācara*, it is read with the dental S.

XIII.

YÁJNYAWALKYA:—On the loss of a beast by the fault of the herdsman, the fine ordained for him is thirteen *pañās* and a half; and he shall pay the value of the beast to its owner.

On the loss of a beast by the fault of the herdsman, he shall be forced to pay a fine of thirteen *pañās* and a half, and make good the property lost, to the owner; that is, the value of the beast as determined

determined by arbitrators. The verse is *intended* to regulate the amount of the fine; the rest had been already propounded.

The *Mitâcsharâ*.

“The verse;” this text (XIII). “The rest,” (the payment of the value to the owner,) already propounded (VI), is thus repeated. Such is the meaning *of the gloss*.

Here “the property lost” signifies its price. The *Retnâcara*.

And thus, whenever it is declared in this chapter that property must be made good, its price is intended; for the property *itself* is *lost* or destroyed. VISHNU expressly mentions the price;

XIV.

VISHNU:—By day, if cattle be in danger from venom or fire, and the herdsman go not *to their assistance*, he shall pay to their owner the price of cattle *thus* destroyed by his fault; and if he milk them without permission, he shall be fined twenty-five *cârshâpanas*.

“Go not;” if he do not go to protect them. “*Cârshâpana*” will be explained. The *Retnâcara*.

Meaning, that it will be explained in the chapter on Measures.

But others remark, that the expression “by day,” denotes the time, whatever it be, during which the cattle are intrusted to the herdsman for custody. “If he go not,” though able; meaning his not defending the cattle, through negligence, indolence, knavery or the like. MENU *thus* explains a *cârshâpan’a*; “A *carsha* (or eighty *raeticâs*) of copper is called a *pan’a* or *cârshâpan’a*.” On which CULLÛCABHATTA thus comments; “the quantity of a *carsha* of copper is called a *cârshâpan’a*, and is also called a *pan’a*. Now, a *carsha* is the weight of eighty seeds of the *gunjâ*: for “five seeds of the *gunjâ* are the first, or *forensick*, *mâsha*; sixteen of these are an *acsha* or *carsha*; and four *carshas* are one *pala**.”

XV.

* AMERA’S Dictionary, in the chapter on Traders and Husbandmen. In law the *mâsha* contains five *raeticâs*; in medicine, ten.

XV.

Brahme purāna: — Should a herdsman, having received his hire, leave his cattle in a desolate forest, and go for his pleasure to the village, he shall be chastised by the king, like a surgeon or barber, who leaves his master in the town, and goes for his pleasure to the woodlands.

2. When a cow, committed to the care of a herdsman, dies through his fault, he shall be compelled to make good the loss, and pay a penalty to the lord of the land.
3. If a cow die by the violence of disease or the like in the stall of its owner, who took no pains to heal or relieve her, that owner shall be fined, and shall pay the wages due to his herdsman.

“Leave his cattle;” leave a cow which has been seized with any distemper. “A surgeon;” a physician practising on veins or the like. As he should be chastised, if he leave his master, on whom he ought to attend, and go for his pleasure to the forest; so should this man also be chastised. Consequently, a surgeon, who goes for his pleasure to the woodlands, is an example mentioned for the sake of illustration. The word “*Sālāci* (surgeon)” is explained in the *Chintāmeni*, a barber. Others explain the term, a person armed with a javelin (*Salācā*) or other weapon of offence: he is mentioned incidentally.

“Pay a penalty” (XV 2): thus, by consent of many Sages, the value must be made good if a cow die by the fault of the herdsman; according to *Yājñawalkya*, a fine shall also be paid; and the forfeiture of the herdsman’s wages is intimated in the *Brahme purāna*. Such is the concise statement of the law.

“If a cow die by the violence of disease or the like” (XV 3): if she be destroyed by sickness or the like, in consequence of her owner taking no pains to heal or relieve her, though able to give relief;

relief ; in that case he shall be fined by the king, and be forced to pay the wages due to the herdsman. . The *Retnācara*.

Here the fine to be paid by the owner of the cow must be that which is specified under the supplementary or miscellaneous title ; for there is no person to sue *the offender* : and in this case a taint of sin is the consequence of taking no care of the *diseased* cow.

XVI.

MENU and NĀREDA :—A flock of goats or of sheep being attacked by wolves, and the keeper not going *to repel the attack*, he shall be responsible for every one of them which a wolf shall violently kill.

2. But if any one of them, while they graze together near a wood, and the shepherd keeps them in order, shall be suddenly killed by a wolf springing on it, he shall not in that case be responsible.

Under the term “a flock of goats or sheep,” are comprehended *all* beasts liable to attacks. “Being attacked ;” being assailed. So the *Retnācara*. CULLÚCABHATTA delivers the very same *interpretation*.

“If any one of them, &c. ;” if a wolf, springing unperceived out of some thicket, kill any one of those goats or sheep which were intrusted to the shepherd, and were grazing together in the forest, the shepherd does not in that case incur blame.

CULLÚCABHATTA.

But if the herdsman carelessly pasture the cattle in a dangerous spot, although there be safe places for pasturage, blame is imputable to him ; but not, in case of a casual attack by a tiger,

XVII.

NĀREDA :—By this rule shall a dispute with the keeper of all sorts of cattle be decided ; and if any
cows

cows die naturally, he shall be cleared by producing their tails and horns.

“By this rule, &c.,” thus have been declared contests with keepers of all sorts of cattle, even of horses and the like.

The *Retnâcara*.

Consequently, in a dispute with a keeper of horses, the very rule which has been declared must be applied *as in other cases specified*.

“By producing their tails and horns;” let him prove their death in any mode whatever.

The *Chintâmeni*.

Else there might be suspicion of his having sold them.

XVII.

MENU: — When cattle die, let him carry to his master their ears, their hides, their tails, the skin below their navels, their tendons, and the liquor exuding from their foreheads: let him also point out their limbs.

“Their ears, &c.” under these are comprehended any tokens of the dead beast, not common *to, or perfectly similar in, all animals*.

“When cattle die:” when they die at remote distances, “let him point out their limbs;” their durable parts, as horns and the rest. In some places, the text is read, “point out their horns or the like:” on that reading, other tokens, besides those generally carried as above mentioned, are comprehended under the term “or the like.”

SECT. II. — On Fines for Mischief done by Cattle.

XIX.

MENU: — On all sides of a village or small town, let
a space

a space be left for pasture, in breadth either four hundred cubits, or three casts of a large stick; and thrice that space round a city or considerable town.

“Four hundred cubits; *literally*, one hundred *dhanush* or poles;” four cubits make one *dhanush*. “A large stick, or staff;” three casts or throws of that. Near the village on all sides a space exempted from the sowing of grain and the like, should be left for the pasture of cattle, in breadth either four hundred cubits, or three casts of a staff. Again; near a city or considerable town, it should be made thrice as large. CULLÚCABHATTA.

“Stick” (*samyā*); the pin of the yoke. Thrice as much ground as that when thrown passes before it falls, is the space to be left round a village. The *Retnācara*.

Samyā is explained by AMERA, the pin of the yoke*. Here the diversity of opinions should not be imputed as a fault; for it will be fully explained, that the space is not rigidly determined.

“Round a city;” round a considerable town resembling a city.

The *Chintāmeni*.

For a greater space will be directed *to be left* round a city.

XX.

YÁJNYAWALCYA: — By the choice of the inhabitants, in proportion to the *whole* land, or by the authority of the king, should the *common* pasture for kine be *regulated*; but every-where a twice-born man may take, as if it were his own, grass for his cattle, fuel for sacrifice, and flowers for oblations.

2. Let a space be *left* between the village and the fields, in breadth four hundred cubits: let it be eight hundred cubits round a town, and sixteen hundred round a city.

“By

* AMERA'S Dictionary; chapter on Traders and Husbandmen.

“By the choice of the inhabitants ;” *literally*, of the village : in proportion to the *number of* persons inhabiting the village, or according to the small or great quantity of land ; or by the king’s command ; a space of ground should be left for the pasture of kine. Such is the sense of the *first* part of the text.

The *Retnâcara*.

Some good portion of land should be appropriated to the pasturage of kine and the like.

The *Mitâcsharâ*.

The second part of the text (XX) is thus explained in the *Mitâcsharâ* : a twice-born man, in want of grafs or fuel, may anywhere take grafs for kine, wood for *the sacrificial* fire, and flowers for *oblations to* deities, as if they were his own, without opposition ; but *he can only take* fruits from an unenclosed spot, for it is *thus* recorded by GÓTAMA :

XXI.

GÓTAMA :—He may take, as his own, grafs and sacrificial fuel for his cattle and fire, and the blossoms of creepers and of lofty trees *for oblations* ; and their fruit, if they be unenclosed.

This supposes pre-occupancy ; for, should a thing be unoccupied, property also vests by occupancy in others besides twice-born men, as is declared by the same authority.

XXII.

GÓTAMA :—*A man becomes* owner of wealth by purchase, partition, occupancy, hypothecation, and gain.

As for what is again said in the following text :

XXIII.

GÓTAMA : — He, indeed, who seizes grafs without asking

asking *permission of the owner*, or wood, or flowers, or fruits, shall suffer amputation of his hand.

This supposes some other than a twice-born man ; or supposes no distress ; or implies a purpose different from that of *feeding* cows and so forth. Thus, if grass or the like, belonging to a stranger, be taken by a twice-born man, for his cows, his sacrifice, or his fire, there is no offence ; but there is an obvious offence if the grass or the like were produced by *the labour of* a stranger.

Others hold, that a *Brāhmaṇa* may, without the king's permission, take grass or the like from any piece of ground belonging to the king, and not *already* occupied by another *subject* ; but any other than a *Brāhmaṇa* can *only* take grass and the rest from a piece of ground or spot occupied by himself with the king's permission. What is declared by GÓTAMA (XXII), is intended to establish property by the occupancy of a thing not already occupied by another ; or to determine the property in a case of theft.

The other verse (XX 2) is propounded to provide for the well-being of cows and other cattle, standing, lying, or moving.

The *Mitācsharā*.

Others think the second text (XX 2) is intended for an example of the space *to be left*, as directed by the preceding verse (XX 1).

Between the village and the fields, a space measuring four hundred cubits should be *left* on all sides exempt from tillage ; round a small town (*carvāta*) the space should be eight hundred cubits in breadth ; round a populous city, the interval should be measured by sixteen hundred cubits.

VIJNYANÉSWARA.

A *dbanush* is a pole of four cubits. A town (*carvāta*) is larger than a village, and less than a city.

VÁCHESPATI MISRA.

The term is synonymous with large village, or *mahāgrāma*.

The following texts, cited in the *Retnācara*, define a village, town and city.

XXIV.

Mārcandēya purāna : — An inhabited place, in the midst

midst of fields and meadow land, where men of the servile class mostly dwell, and where agriculture thrives, is called *grāma*, or village.

2. An elevated spot, which has substantial buildings, and is surrounded on all sides by a ditch, if it be half or a quarter of a *yōjana* in length, and the eighth part of a *yōjana* in breadth, is a city, or *pura*:
3. It is best, if there be deep water on the eastern side of it; if it be inhabited by persons of pure lineage alone; and if abject races be excluded. *Should the length be half of that described, the place is called a town or c'hét'a*: and one less than that is called a small town, or *carvat'a*.

That inhabited place where the servile class is numerous, and where many husbandmen reside, is named *grāma* or village, and it is situated in the midst of fields and grazed land. Thus, on all sides of the village, there should be pasture; and round this again should be the fields. The residence of priests, soldiers, merchants, and the like, is best in cities and towns: and that is intimated in a preceding chapter (Chap. II. v. IV).

A place abounding in lofty edifices surrounded with walls; itself encompassed by a ditch, and spreading over two *crōśa*, or one *crōśa* only, is called *pura*: and even that is a city (*nagara*); for, in the Dictionary of AMERA, *pur* (the same with *pura*) is mentioned as synonymous with *purī* and *nagarī* (or *nagara*)*. It is best if there be deep water on the east. Half of that length, or half a *crōśa*, constitutes a town, or *c'hét'a*; and less than that, but greater than a village, is a small town, or *carvat'a*.

Is it not derogatory to YÁJNYAWALKYA, that he has not mentioned the space to be left round a town or *c'hét'a*? The objection is anticipated and answered in the *Retnācara*: It must be inferred, even though not mentioned, that the pasture ground for kine should be regulated in proportion to the abundance of cattle in the village or the like. Consequently, a space of four hundred cubits is only mentioned for the sake of illustration: the real meaning

* Dictionary of AMERA; chapter on Cities.

meaning is, that pasture should be left for kine, in proportion to the *number of* inhabitants.

XXV.

MENU :—Within that *pasture ground*, if cattle do any damage to grain in a field unenclosed with a hedge, the king shall not punish the herdsman.

“ Within that ;” within the pasture ground of the village.

The *Chintāmeni*.

XXVI.

VISHNU :—No offence is *imputable to the herdsman*, if the cattle graze, for a short time, in an unenclosed field, near the road, the village, or the pasture ground.

“ If the cattle graze ” is supplied *to explain the purport of the text*. Should a field, which is situated near the road, the village, or the space left for pasture, and which is unfenced, be grazed by cows or the like for a short time, there is no offence on the part of the herdsman : but if they graze there long, blame is imputed to him ; for it is considered as arising from his fault.

The *Chintāmeni*.

The very same *exposition* is found in the *Retnācara*.

XXVII.

NÁREDA :—The herdsman is not answerable for damage done in a field adjoining to a village or a pasture ground, and which is unfenced.

“ Pasture ground ;” a space of grass land reserved for feeding cows and the like : a field adjoining to that. The *Retnācara*.

XXVIII.

XXVIII.

YÁJNYAWALCYA :—No offence exists, if *damage be done* unintentionally in a field situated near the road, the village, or the pasture ground : but if the cattle be wilfully grazed there, the offender is liable to be punished as a thief.

Consequently the declaration, that “there is no offence if the field be near the road or the pasture ground,” is restricted to the case of cattle accidentally grazing in it : and this also has been intimated by VISHNU in another form ; “if the cattle graze for a short time, &c.” (XXVI). Such is the opinion delivered in the *Chintāmeni*.

By the term used in the texts of VISHNU, NÁREDA and YAJNYAWALCYA, “within *the pasture ground*, &c.” it is declared, that no blame *falls on the herdsman* if the field be situated near the pasture ground. But there can be no grain in the pasture ground. However, when grain is sown within the space of four hundred cubits, the pasture ground is reduced by the consent of the inhabitants or otherwise : and in the text of MENU (XXV), “within that,” or there, is the seventh or local case used in the sense of proximity ; as in the line, “CRĪSHNA sports in the woods (in, or) near the *Cālinḍī* (or *Yamunā*) :” and, even according to those who hold that the name of the river has in that example the secondary sense of its neighbourhood, the word there, or within that, may in the present instance signify near that *pasture ground*. Thus others explain the text.

Should a field, situated near the road or highway, or near the village or pasture ground, be grazed by cows, without design *on the part of the herdsman or his master*, no blame is imputable either to the cow-herd, or to the owner of the cattle ; that there is no offence, is mentioned, to exempt them from penalties, and from paying the value of the grain damaged. But, if the cattle be wilfully grazed there, the offender suffers punishment, as a thief, for grazing cattle there by design : namely, such a punishment as is inflicted on a thief. The text of YÁJNYAWALCYA (XXVIII) is so explained in the *Mitácsharā*.

XXIX.

MENU:—Should cattle, attended by a herdsman, do mischief near a high way, in an enclosed field, or near the village, he shall be fined a hundred *pañās*; but, against cattle which have no keeper, let the owner of the field secure it.

Near a highway, or near the village, in a field of arable land enclosed with a hedge, should cattle, attended by a herdsman, but not restrained by him, enter the field by the gate or otherwise, and graze in it, he shall be fined a hundred *pañās*: and, as the beast cannot be fined, the herdsman must pay the fine. But the person who watches the field must drive away beasts which have no keeper, if they be found grazing there.

CULLÚCABHATTA.

XXX.

NÁREDA:—If damage be done to grain by cows or the like breaking through a fence, the herdsman shall in that case be punished, if he did not restrain the cattle, though able *to do so*.

“A fence;” an obstacle.

CHANDÉSWARA.

“Breaking;” this follows the regular sense of the crude verb *criti*, cut. “The herdsman shall be punished;” if he do not restrain the cattle, he shall be fined a hundred *pañās*: for the text coincides with that of MENU (XXIX). But, perceiving the breach in the fence, if he immediately restrain the cattle, no blame is imputable to him. “Though able;” from this expression *it appears that* no blame is imputed to him, if he then happen to be unable to restrain a bull eager to approach a cow: and so in other cases. Thus other lawyers declare *the rule*.

XXXI.

UŚANAS:—Neither ancestors, nor deities, taste the offerings

offerings of that man who demands compensation for corn destroyed by cows.

It is thus ordained, that the owner of the corn should not take the value of grain consumed by cows. But if, violating the prescribed system of duty, he do demand *compensation*, the judge must enforce payment; for there is no exception *relative to cows* in forensick law. The judge must *of course* enforce payment of the value of grain consumed by any other beast.

It is declared, that there is no offence if damage be done to grain in a field unenclosed with a hedge (XXV); and that there is offence, if corn, in a field enclosed with a hedge, be eaten by *cattle*: what sort of a hedge *should be made*? MENU himself describes it.

XXXII.

MENU:—Let the owner of the field enclose it with a hedge of *thorny plants*, over which a camel could not look; and let him stop every gap, through which a dog or a boar could thrust his head.

Round a field of arable land, let him make a hedge of thorny plants, in such a mode that a camel standing on the other side may not overlook it; and let him stop every gap whatsoever through which a dog or a boar could thrust his head.

CULLÚCABHATTA.

XXXIII.

NÁREDA:—Round a field near the highway, a hedge should be made, over which a camel could not look; which no beast could overleap; and which neither a dog nor a boar could break through.

“Over which a camel could not look;” that is, of such a height that a camel standing on one side of it could not look over it to the other side.

HELÁYUDHA.

It follows, that the hedge should be high ; for, if a camel, passing by, see the corn enclosed by it, then, breaking the hedge, and impelled by hunger, he cannot be restrained by his keeper. If a low hedge be made, there is no offence in the case of mischief done by a camel *in such a field*, any more than in *the case of a trespass* on a field unenclosed by a hedge : and so in respect of elephants, horses, and the like.

Over which hedge cattle cannot reach, and see the grain within it. The *Párijāta*.

XXXIV.

SANC'HA and LIC'HITA :—To a field near the road a hedge should be made, over which a camel could not look, and through which a dog or a boar could not open a passage.

“ A passage ;” *literally*, an interval : *that is*, an opportunity of entrance. The *Retnācara*.

Consequently such a fence must be made, by means of which cattle may be prevented from forcibly destroying the corn. If that be not done, no penalty is incurred by the keepers of the several sorts of cattle. At what season a fence should be made, CĀTYĀYANA declares, for the benefit of the husbandman.

XXXV.

CĀTYĀYANA :—When the grain is not yet produced, let him make a strong fence ; for beasts, eager after once tasting what they relish, are with difficulty hindered.

“ Beasts ” here signify cattle. The *Retnācara*.

“ Strong ;” *literally*, great : by this is suggested a hedge over which a camel cannot look, and through which a dog or a boar cannot open a passage.

“ After once tasting what they relish :” the meaning is, when they taste things which are desired by them.

XXXVI.

XXXVI.

MENU:—In other fields, the *keeper* of cattle doing mischief shall be fined one *pan'a* and a quarter; but, in all places, the value of the *damaged* grain must be paid: such is the fixed rule concerning a husbandman.

III V XX

In other fields, not adjoining to the road-side and the like, should mischief be done by cattle, the keeper shall be amerced. It should be here noticed, that the fine is one *pan'a* and a quarter for every head of cattle. So the *Retnâcara*; and CULLÚCABHATTA gives the very same interpretation.

In other fields, situated at a distance from the highway and the like, distinct fines are ordained for distinct kinds of cattle: so the *Chintâmeni*. Those fines will be subsequently mentioned.

“In all places” (XXXVI); the grain consumed by cattle in any field, must be made good to the owner of it, by the herdsman, or by the owner of the cattle, according as the offence is imputable to one or the other. Such should be the decision.

CULLÚCABHATTA.

Thus property in the field is attributed to the husbandman by this very gloss of CULLÚCABHATTA. It appears from the phrase “in all places” (XXXVI), that the grain eaten by cattle off a field enclosed with a hedge as above mentioned, must also be made good to the husbandman.

XXXVII.

SANC'HA and **LIC'HITA**:—A cow, grazing during the night, brings on its owner, or keeper, a fine of five *mâshas*; during the day, three *mâshas*; and for one hour, (*muhúrta**,) one *masha*: but no fine is imposed if she graze in the village.

A A 3

“Grazing;”

* *Muhúrta*, the thirtieth part of a day and night.

“Grazing ;” eating until satiated. Hence, if she graze by day until she be satisfied, *the fine is three māshas*. But if she graze for one hour only, a fine of one *māsha* should be levied. However, no fine shall be imposed for her grazing within the village ; that is, in a field within the limits of the village and the like. A *māsha* here signifies the twentieth part of a *cārshāpana*, as declared by NĀREDA.

XXXVIII.

NĀREDA : — But a *māsha* may be considered as the twentieth part of a *cārshāpana*.

And that is meant of silver. Accordingly the author of the *Bhāṣya* says :

In matters of fine it is proper to count by *māshas* of gold ; but, for grain eaten by cattle, *the fines are regulated by other māshas, namely, those of silver*.

A *cārshāpana* is also a measure of silver as well as of copper ; and here a *māsha* of silver contains two *raśticās* or seeds of the *gunjā*, each equal to three barley-corns : as is declared by MENU (Chap. VIII. v. 134 and 135). The text of SANC’HA and LIC’HITA is thus expounded in the *Retnācara*, and also in the *Vivāda Chintāmeni*.

Since the author of the *Bhāṣya* directs the *māsha* of silver in the case of grain eaten by cattle, *because he is scrupulous of the great inequality in comparison with the fine of one paṇa and a quarter*, whether the *māsha* containing sixteen *raśticās* be taken, as declared by VRĪHASPATI (“ but the twentieth part of a *pala* is called a *māsha* ”), or the *māsha* containing five *raśticās*, as mentioned by MENU (“ five *crīṣṇālas* or *raśticās* of gold are one *māsha* ”) ; *therefore* the rule is thus settled by authors, who think that the *māsha* of silver, containing two *raśticās*, as mentioned by MENU, should not be abandoned : if the beast eat grain during the night until it be satisfied, a fine of ten *raśticās* of silver shall be paid to the king ; if it eat so long during the day, six *raśticās* of

of silver ; if it do not eat until it be satisfied, but graze for some short time, whether by night or day, two *raśticās* of silver : and the value of the grain consumed in the field must be made good to the husbandman. This proceeds on the supposition of one *pañ'a* and a quarter being equal to two *raśticās* of silver : if they be unequal, a distinction must be assumed, from the *sort*, or from the *quantity*, of grain destroyed. But others explain a *pañ'a* and a quarter in the text of MENU (XXXVI), as signifying a *pañ'a* and a quarter of copper.

As for the opinion, that a fine of one *māśha* for a cow grazing during one *muhūrta* is directed, to obviate the doubt, “ what fine should be imposed in the case of a cow grazing during twilight ; because distinct rules are delivered for the respective cases of a cow grazing during the day and during the night ;” and accordingly the law declares, that “ twilight, called *mūhurta*, is considered as uniform, whether *the day* increase or wane ;” and here the word *mūhurta* denotes a particular hour of *the day* : that opinion is wrong ; for common sense opposes the same regulation, when a cow has grazed in a stranger's field during the night, whether she grazed *there* for some trifling space of time, or until she were satisfied : and there is no *real* difficulty, since twilight, exclusive of day and night, is not admitted in philosophy.

“ But no fine, in the village ” (XXXVII) : since this has obviously the same import with the text of MENU (XXV), no fine is imposed for a cow grazing near the village, or near the high way ; *it is not meant, that no fine is imposed for her grazing on land appropriated to dwelling-places.* “ Village ” is here used in the locative case with the sense of proximity, as in the example quoted ; “ CRĪSHNA sports in the forest (in, *that is*) near the Yamunā.” Consequently there is no difficulty : and it should be so understood.

The following text elucidates what is observed in the *Chintāmeni*, that distinct fines are ordained for distinct kinds of cattle ;

XXXIX.

CĀTYĀYANA :—*For mischief done by a cow, let the king compel the owner to pay a quarter of a*

pañ'a; for a female buffalo, two quarters: but for goats, sheep, and calves, the fine ordained is a quarter of that which has been last mentioned.

Here a quarter of a *pañ'a* should be considered as the fine ordained if the grain were eaten during the night. A quarter of a *pañ'a* is the fourth part of a *cârshâpana*. The *Retnâcara*.

Pañ'a here signifies *cârshâpana*. The *Chintâmeni*.

This obviously means a *cârshâpana* of silver, consisting of forty *crîshnalas* or seeds of the *gunjâ*: for the text of NĀREDA declares, that a *māsha* is the twentieth part of a *cârshâpana* (XXXVIII); and the text of MENU expresses, that “two *crîshnalas* or *râcticas* of silver are considered as one *māshaca*. A quarter of a *pañ'a* (or ten *crîshnalas* of silver) is the same with five *māshacas* of silver: and this coincides with the text of SANC'HA and LIC'HITA (XXXVII).

XL.

GÓTAMA:—Five *māshas* for a cow, six for a camel, ten for a horse or a female buffalo, and two each for a goat and a sheep.

Since the word horse is here exhibited in the masculine gender, the same amercement should be paid for male buffalos and the rest which is directed for females; and the same for a mare and for a horse. But cows and female buffalos are instanced, considering the excellence of the female, which affords milk for consumption.

“And two each for a goat and a sheep;” the meaning is, two and a half. To exhibit the coincidence of this text of GÓTAMA (XL) with that of CĀTYĀYANA above cited (XXXIX), some explain “a quarter,” the fourth part of the fine just mentioned for a buffalo grazing in a stranger's field; that is, a fourth part of two quarters of a *pañ'a*: for it has the same import with the text to be quoted from YĀJNYAWALKYA (XLII). Others say, it supposes particular mischief happening without design. This rule of GÓTAMA concerns cattle grazing during the night.

XLI.

XLI.

SANC'HA and LIC'HITA:—For the young of every sort of cattle, a *māsha*; for a female buffalo, ten; for an afs and a camel, sixteen; for a goat and a sheep, four.

This text concurs with *those of* GÓTAMA and CÁTYÁYANA, in directing a fine of ten *māshas* for a female buffalo. “Sixteen for an afs and a camel,” contradicts GÓTAMA, “Four for a goat and a sheep,” contradicts both GÓTAMA and CÁTYÁYANA: and “a *māsha* for calves, or the young of cattle,” contradicts CÁTYÁYANA.

On this point, some hold that the connexion of terms is remote in the phrase “six for a camel; ten for a horse or a female buffalo” (XL): in this manner; for a horse, or a female buffalo, ten; for a camel, ten and six, or sixteen, and so forth; and the meaning of “four for a goat and a sheep” is, two for a goat, and two for a sheep. “A *māsha* for young cattle” is here meant of a *māsha* consisting of five *crīshnalas*. It should not be objected, that the *māsha* of five *crīshnalas* is inadmissible, because MENU has defined the *māsha* of silver as consisting of two *crīshnalas* only. Since MENU has also defined the term *cārshāpana* as relating to copper only, there could not be also a *cārshāpana* of silver; it may therefore be said, that the several terms likewise signify those several weights of iron or other metals. Or, “a *māsha* for young cattle” may suppose very young cattle; and the text of CÁTYÁYANA (XXXIX) may suppose older calves. The young of all sorts of cattle, or any beasts in the first period of life, are intended.

XLII.

YÁJNYAWALCYA:—The owner of a female buffalo, doing damage to grain, shall be fined eight *māshas*; of a cow, half that *amercement*; and of a goat or sheep, half again of this *amercement*:

2. For

2. For cattle eating and lying down in the field, the fine is double the amercement mentioned. It is also the same if they trespass on preserved pastures; and the fine for an ass or a camel is the same with that for a female buffalo.

A female buffalo, doing mischief in a stranger's field, shall be fined eight *māshas*: a cow half that, or four *māshas*; goats and sheep shall be fined two *māshas*. As buffalos and the rest have no interest in wealth, the person who owns them is intended. A *māsha* here signifies the twentieth part of a *pañā* of copper; for NĀREDA records, that a *māsha* is considered as the twentieth part of a *pañā*, and the text concerns a trespass without design.

The *Mitācsharā*.

Some remark it, as the sense of the *Mitācsharā*, that the fine is regulated by a *māsha* consisting of four *raśticās* of copper. But that is erroneous; for the author of the *Bhāṣhya* declares fines to be regulated by the *māsha* of silver, in the case of cattle grazing on a stranger's ground: and thus, according to the *Mitācsharā*, the fine is determined by a *māsha*, or quantity of silver weighing five *raśticās*; and that contradicts the opinion already quoted from the *Retnācara* and other works. Apprehending its inconsistency with the texts which ordain a fine of five *māshas* (XL), the author of the *Mitācsharā* adds: the text concerns a trespass without design; meaning damage done to grain without design on the part of the keeper. But if the damage happen with his previous knowledge, the fine is that which is directed by CĀTYĀYANA and the rest. Such is his opinion. (XIXXX) ANAYAYTA 10 1231

Others apply the two texts which ordain fines of eight and ten *māshas*, according to the particular damage done, or particular age of the beast.

XLIII.

NĀREDA:—Let the king compel the owner of a cow which has done mischief, to pay a fine of one *māsha*; and of a female buffalo, two *māshas*: and let the fine

fine for goats, sheep, or young cattle, be half a *másha*.

This supposes corn consumed, but so that the root remains fit for replanting. Such is the interpretation proposed in the *Mitácshará*.

“For cattle eating and lying down” (XLII 2): if cattle, after eating grain in a stranger’s field, sleep there undisturbed, the fine shall be double; if, accompanied with their young, they graze and lie down, it shall be quadruple the fine that has been mentioned: for a text ordains—

XLIV.

Twice as much is directed for cattle abiding there, and four times as much for cattle accompanied by their young.

This is also stated in the *Mitácshará*.

“It is the same, &c.” (XLII 2); even for mischief done in a preserved pasture, the fine is similar to that which is ordained in the case of mischief done by cattle in a field. The *Retnácara*.

“A preserved pasture;” a preserved space of ground, abounding in grass and wood. If mischief be there done, the fine is equal to that for trespasses on other fields. “If they trespass;” if buffaloes and the rest do mischief. The *Mitácshará*.

The *Retnácara* should also be quoted on this point. The fine for an ass or a camel is the same with that paid for a female buffalo; in whatever fine the owner of a female buffalo is amerced in each case, in such a fine shall the owner of an ass or a camel be amerced in the same case. Such is the opinion expressed in the *Mitácshará*.

XLV.

VISHNU:—If a female buffalo do injury to grain, her keeper shall be fined eight *máshas*; or if a horse, a camel, or an ass do so, the amercement is the

the same ; if a cow trespass, half that fine ; if a goat or sheep do mischief, half that again : if the cattle lie down after grazing, the amercement is doubled.

“ A horse, a camel, or an afs ;” ‘ if they do injury to grain,’ is brought forward *from the preceding sentence.* The *Retnâcara*.

Consequently it has the same import with the text of YĀJNYA-WALCYA (XLII) ; but VISHNU (XLV) disagrees with GÔ-TAMA (XL), and with SANC’HA and LIC’HITA (XLI). On this point some *lawyers* observe, that, in particular countries, an afs and a camel being *held* equal to a female buffalo, the text of VISHNU is there *applicable* ; in some places, an afs and a camel consuming more than a female buffalo, the text of SANC’HA and LIC’HITA there *regulates the fine.*

XLVI.

NĀREDA :—Let *the owner or the keeper of* cows be fined a quarter of a *cārshāpana* ; and *the proprietor or the herdsman of* female buffalos, twice as much ; another fine of a *māsha* is ordained for a goat or a sheep *trespassing* with its young.

2. For cattle eating grain until they be satisfied, the fine is double ; but for cattle abiding, *it is* quadruple : and the punishment of theft is ordained by the wife, for those who graze cattle *on a stranger’s ground* in their own fight.

“ A quarter ;” the fourth part of a *cārshāpana*, or ten *raśticās* of silver. “ Twice as much ;” twenty *raśticās* of silver. “ Another fine of a *māsha* ;” since the fine for goats and sheep is in every instance declared half that for a cow, it signifies a *māsha* containing five *crīṣṇālas*.

CHANDÉSWARA explains the *term used in the text*, satisfied with grain eaten ; and “ abiding,” passing the night there after grazing.

grazing. This supposes cattle pastured unperceived; but, for them who graze cattle openly *on a stranger's ground*, the punishment of a thief is ordained. "Who graze cattle in their sight" (XLVI 2); who pasture them by force, even in the presence of the husbandman.

In the *Chintāmeni* a similar exposition is delivered: it is there said, that the sense of the first hemistich (XLVI 2) is *this*; if they pass such a length of time that they lie down after eating grain, and afterward, hunger returning, graze *there* again.

We cannot discover why it is said "even in the presence of the husbandman;" for every difficulty is removed by saying, "in the *sight* or presence of the herdsman, who suffers the cattle to consume the grain."

XLVII.

NÁREDA:—But if a cow, straying by the fault of the herdsman, damage a field, no penalty is in that case exacted from the owner: the herdsman suffers the punishment of that *offence*.

2. But he (*the owner*) should restrain the cows from *fields* of grain: if they graze there *with his knowledge*, the blame falls on both master and herdsman; the master shall be compelled to pay the value of the grain and a fine, and the herdsman shall be scourged.

In a *preceding* text (XLVI 1) a rule is propounded for an amercement of a quarter of a *cārshāpana*, and so forth, *to be levied* on cows and other cattle. That cannot be strictly applicable, because cows and the rest have no property; therefore *the Sage* himself announces the inference (XLVII). "Straying;" going out of sight. If cows intrusted to a herdsman destroy grain out of his master's sight, by the fault of that herdsman, the penalty falls on him alone: in a similar case, if their owner see them eating the grain, he should drive them off; but if he restrain them not, he must pay the amercement, and make good the value of the grain consumed: for such is the sense attributed to *the word* penalty,

penalty, since the master is concerned. To chastise the herdsman, a scourging is directed: that also is a penalty. This should be understood: and CHANDÉSWARA virtually gives the same interpretation.

XLVIII.

YÁJNYAWALCYA:—As much grain as shall be destroyed, so much produce shall be *paid* to the husbandmen; the herdsman shall be scourged; but the owner of the cattle incurs the fine already declared.

Grain is mentioned to denote generally the produce of fields. As much straw, grain, or the like, as is destroyed by cows or other cattle, so much produce shall the owner of them be compelled to pay to the owner of the field; according to the valuation determined by arbitrators, in this form, “from so much land the produce is so much.” But the herdsman shall only be beaten; he shall not be compelled to pay for the produce: the scourging of the herdsman, accompanied by the pecuniary fine above mentioned, must be applied to the case of damage done to grain by his fault (XLVII 1). Again: the owner of the cattle incurs the fine already declared, if grain be injured by his own fault; *he is not liable to a scourging*. But, in every case, the produce must be made good by the owner of the cattle alone; for he participates in the produce of the field, by means of milk obtained from female buffalos and the like, fed on grass, the produce of that field. The produce, remaining above the *quantity* consumed by the cows and the like, should be taken by the owner of the cattle; for he has absolutely bought it by payment of the price adjudged by arbitrators.

VIJNYÁ ÉSWARA.

Consequently, in those cases also where the herdsman shall be amerced, the value of the grain consumed shall be paid by the owner of the cattle to the proprietor of the field. Such is his meaning. But that is not the opinion of CHANDÉSWARA; for, in a gloss on the following text of NÁREDA (XLIX), he says, “if the corn be destroyed, together with its root, both *the master and*

and herdsman being in fault, the master must pay grain to the amount of the damage, and a fine."

XLIX.

NÁREDA:—But if the corn be destroyed, together with its root, let the owner *of the land* receive the quantity of grain, which would have been produced from that *field*; let the herdsman be dismissed with blows; and let the amercement fall on *his* master.

In the first part of the text of YÁJNYAWALCYA (XLVIII) it is directed, that the grain shall be received by the husbandman; but the person from whom it shall be received is not mentioned. Therefore, since the king must receive the amercement, it may thence be argued, from suggestions of common sense, that, in the case where the herdsman suffers the punishment, *or incurs the penalty* (XLVII 1), both the husbandman and the king receive a penalty.

In the preceding texts fines are declared against female buffalos and other cattle; and that is incongruous, since they have no wealth: hence it is said, the herdsman shall be scourged (XLVIII). But (*it is added*) the owner of the cattle incurs the fine; this, however, supposes the case of a fault on the part of the owner of cattle. CHANDÉSWARA's opinion must be so understood. Consequently it should be held, on his construction *of the law*, that a penalty must also be paid to the owner of the field, by the same person, and in the same case, in which a fine is paid by that person to the king.

"With blows" (XLIX); with hurt proportioned to the offence. Corn is considered as destroyed, together with its root, when the mischief is such that it cannot be replanted.

CHANDÉSWARA.

Is not this text superfluous; since the same sense is deduced from a former one, "the master shall be compelled to pay the value of the grain and a fine" (XLVII 2)? This text is a reply to the question, to whom shall the value of the grain be paid? and thus, if the corn can be replanted, and the crop be so obtained

tained in consequence of a pecuniary payment *for the charge of replanting the corn*, an equivalent shall not be again paid for the plants eaten.

L.

VISHNU :—And, in every case, *the offender shall be compelled to pay* the value of the grain destroyed.

“ Shall be compelled to pay ” must be supplied in the text. “ In every case ; ” whether the cattle be attended or unattended. The copulative “ and ” connects the subject with the fine payable to the king. The *Retnâcara*.

LI.

NÂREDA :—But, to that man who demands *compensation for* grain consumed by cows, *the value of it* must be paid, as determined by arbitrators: wherever destroyed,

2. Grass must be made good to its owner, and grain to the husbandman. A fine indeed is also ordained, if corn be trodden down by cows.

“ The grain consumed ; ” in proportion to the grain consumed, *must payment be made*. “ Grass ; ” common herbage: and this payment for herbage occurs in the case of a reserved pasture.

The *Retnâcara*.

“ Grass ; ” blades of corn. “ The owner ; ” the proprietor of the cattle. The blades of corn or the grain must be made good by him to the husbandman. Such is the sense of *the texts*.

The compensation may be taken consistently with municipal, but not with moral, law, for it is a cause of sinking to a region of torment. It should not be taken by a righteous man, for that is discouraged by the text of UŚANAS above cited (XXXI).

The *Chintâmeri*.

The meaning of *that gloss of the Chintâmeri* is, that NÂREDA intimates a right of taking *compensation*, by this expression “ that man

man who demands it." "As determined by arbitrators :—" adjudged by arbitrators in this form, "so much grain *would have been produced* in this field."

The *apparent* contrariety of *texts*, propounding inconsistent fines for the very same offence, must be reconciled by regulating the fine according to the *trespasses committed* by day or night, with or without design. The *Retnâcara*.

Thus the *apparent* inconsistency of the *texts* of GÓTAMA, YÁJ-
NYAWALCYA and the rest, should be reconciled, as proposed in the *Mitâcsharâ* and other works. Such also is the opinion *intimated* in the *Retnâcara*.

SECT. III.—On *Trespasses not finable*.

On the subject of herdsmen,

LII.

NAREDA ordains :—If he be seized by the king or by a crocodile, struck by thunder and lightning, bitten by a serpent, *hurt by a fall* from a tree,
2. Smitten by a tiger or the like, or attacked by disease, there is no offence on the part of the herdsmen; nor is any blame *imputable* to the owner of the cattle.

If the herdsmen be seized by the king for the purpose of *employing him* in the performance of work, or if he be seized by an alligator; under such circumstances, should grain be eaten by the cattle committed to his charge, no blame is imputable to him. If he be struck "by thunder and lightning;" a distinction must be supposed between these, from some difference in the mode *in which he is struck*. Sometimes a man survives, though struck by
VOL. II. B B thunder

thunder and lightning: therefore no blame is imputable to a herdsman affected by such an accident. "Nor to the owner of the cattle:" if the herdsman die in consequence of such an accident, no blame is imputable to the owner of the cattle, provided he was ignorant of the trespass.

LIII.

YÁJNYAWALKYA:—A bull, consecrated cattle, a cow which has lately calved, a stray, and other beasts which are not attended by a keeper, should be set free, *for* they are impelled by God and the king.

"A bull" kept for impregnation. "Consecrated cattle," dismissed in honour of the deity, according to the form for consecrating bulls. "A cow which has lately calved;" within ten days after her calving. "A stray;" wandering from its own herd, and coming from another country. These "should be set free;" even though they consume a stranger's grain, no fine shall be levied. Cattle also, "which are not attended by a keeper, are impelled by God and the king;" they are urged by God and the king; therefore, if they destroy grain, no fine shall be levied. Under the term "other beasts," elephants, horses, and the like are comprehended; and they are mentioned by UŚANAS.

The *Mitācsharā*. In the *Retnācāra* also, the same exposition is given. Since a fine cannot be imposed for consecrated cattle, which have no human owner, the mention of them must be intended for the purpose of illustration. As consecrated cattle occasion no amercement, so bulls and the rest occasion none. This also is noticed in the *Mitācsharā*.

A bull cannot be restrained. Consecrated cattle are beasts dismissed in honour of the deity. As land dedicated to the deity, and the vessels appropriated to worship, are held and kept by the instituted worshipper of the deity; so, if some person feed, with *as* or the like, cattle consecrated by any man, it might be questioned

questioned whether he should be liable to a fine; and since it might be questioned, in the case of a bull dismissed, whether the dismitter be liable to a fine, because he is the remote cause of the trespass, *therefore* it is declared *that* no fine *shall be imposed*: or it is so declared, on the doubt whether the keeper might be fined for mischief done by consecrated cattle attended by a keeper. It might be questioned, whether a fine should be *levied for the trespass* of a stray, when the owner is ascertained by long watching the beast: and it is declared, that no fine shall be exacted for the transgression of those *herdsmen* who abscond through fear of God or the king; nor from owners of unattended cattle, provided the cattle be fortuitously unguarded; nor for cattle terrified by the fall of thunder or the like. Thus others expound the law.

“Strays,” coming from another village, or wandering from the herd, *and* which are not attended by a keeper. Such is the sense of the text. The meaning is, that there is no offence, if cattle, running away on seeing an army, or on hearing *some frightful* noise or the like, graze in a stranger’s field. The *Chintāmeni*.

But the sense is thus *stated* in the *Retnācara*: cattle which have strayed in consequence of rain or the like, through the act of God, or through *some act* of the king’s officers, without any fault on the part of the herdsman, should be set free.

But “or” is supplied in the *Pārijāta*; “or *those* which are not attended by a keeper.” In fact, it should be assumed both ways; for they are *both* equally pertinent.

LIV.

MENU:—For damage done by a cow before ten days have passed since her calving, by bulls *kept for impregnation*, and by cattle consecrated to the deity, whether attended or unattended, MENU has ordained no fine.

A cow within ten days after her calving, bulls dismissed with marks

marks of the trident and discus*, cattle dedicated to the deity, whether attended or unattended, MENU has declared not finable when found grazing in corn. Since even consecrated bulls are kept by herdsmen among cows for the sake of impregnating them, it is possible that they may be attended by a keeper.

CULLÚCABHATTA.

“Bulls” kept for impregnation.

The *Chintāmeni*.

“Before ten days have passed since her calving;” the meaning is, if ten days have not elapsed since her calving.

LV.

NĀREDA : — A cow within ten days after her calving, a bull, horses and elephants, should be diligently kept off; their owner is not bameable for *their trespasses*.

“Horses and elephants,” appropriated to the protection of the subject. The *Retnācara*.

LVI.

UŚANAS : — For elephants and horses no fine is allowed, since they are considered as defences of the subject; nor for cattle blind of one eye or lame, nor for bulls marked with the token of consecration; 2. Nor for a stray, nor for a cow which lately calved, nor for one which desires the male; nor for cows, during jubilees, nor at the season of obsequies.

“Lame;”

* The figure of a trident is stamped with a hot iron on the right shoulder, and a circle or discus on the left ham of the steer which is dismissed with four heifers at obsequies and other occasions of mourning: the same marks are made with sandal-wood, instead of being stamped with a hot iron, on a steer dismissed at a marriage or other occasion of rejoicing. The trident betokens the consecration of the bull to RUDRA: it is not so obvious what is intended by the discus, which is the weapon of VISHNU; for it does not appear that the bull is consecrated to this deity. T.

“Lame;” crippled. By the terms “blind of one eye or lame.” is here denoted cattle very much disabled. “Bulls marked;” distinguished by the mark of a trident and the like. “Perverse” (*for CHANDÉSWARA reads abhichārini, instead of abhisārini concupiscent;*) one which bears excessive beating without obeying its driver. *The Retnācara.*

In the *Pārijāta* it is read *abbisārini*, and explained “one which desires the bull.” “Horses,” belonging to the king; for they are a defence to the subject. As for what is declared by GÓTOMA, “ten for a horse or a female buffalo” (XL), that concerns horses belonging to traders and the like: consequently there is no inconsistency.

In the *Chintāmeni* the reading is, *vyabhichārini*; it signifies one which is much disposed to run away from its keeper. The words “blind of one eye or lame,” are there expounded as in the *Retnācara*.

“Nor for cows;” consequently, should some inconsiderable mischief be done by cattle belonging to owners wholly occupied in the celebration of a festival or the like, no fine shall be exacted. Thus other lawyers explain the text.

LVII.

SANC’HA and LIC’HITA:—Small cattle, and animals of general use, may not be driven away; the owners of mules, elephants, and horses, are exempt from fines; such beasts are ungovernable, and should be gently driven away.

“A mule,” born of a mare by an ass. “Ungovernable;” beasts which cannot readily be driven away. *The Retnācara.*

“Small cattle;” calves, or young cattle, may not be driven away. “Animals of general use,” such as cats and the like, occasion no amercement, even though they do mischief: those animals which are of general use, or which suit the purposes of all, should be maintained by all. “Mules, elephants, and horses,” appropriated to the protection of the subject. Thus others expound the law.

But in the *Chintāmeni* the reading is, "small cattle, and ungovernable mules, elephants, and horses," "Ungovernable" is explained unmanageable.

The reading of the *Pracāśa* and *Pārijāta* is *abadhya* (explained "not to be smitten"); instead of *avaśya*, ungovernable.

LVIII.

CĀTYĀYANA: — If cattle of the lowest, highest, or middle sorts be beaten, should their owner sue *the offender*, let the king adjudge a fine.

2. But **VRIHASPATI** permits the seizure and chastisement of beasts which trespass in fields, flower-gardens, reserved pastures, houses, or stalls for cattle.

"Stalls, or paddocks;" places abounding in grass. "Seizure;" binding or tying.

CHANDĒSWARA.

There is no offence in beating or tying cattle which trespass in a house or the like.

VĀCHESPATI MISRA.

But the reading approved by him is *pasu rājishu*, among strings of cattle, instead of *pasu vāfīshu*, in stalls for cattle: and preserved pastures signify places abounding in grass.

In the first text (LVIII 1), "*against the striker*" must be supplied after the words "adjudge a fine:" and the second text is recited by **MISRA**, with these words premised, "the Sage declares an exception to that rule." Thus, if he strike cattle without a fault, the striker shall be amerced; but not if the cattle trespass in a field or the like. Such is his opinion.

But others hold, that striking without provocation should be considered under the title of Assault and Violence; under the present head, it is permitted to strike cattle if they transgress: in that case, their owners, prosecuting the striker, shall be amerced. The Sage propounds the transgressions in the second verse (LVIII 2).

In the *Retnācara*, "flower-gardens and reserved pastures," are explained

explained lands cultivated by a man himself for gardens or the like. Or "flower-gardens" may signify gardens in general; and "reserved" spots, fields of pot-herbs or the like adjoining to the habitation.

LIX.

MENU:—These rules let a just prince observe in all cases of transgression by masters, their cattle, and their herdsmen.

Let a king, excelling in justice, observe these rules above declared, in cases of transgression by masters and herdsmen not guarding *their cattle*, and in cases of damage done to grain by cattle.

DUTIES OF A HUSBAND.

SECT. I.—On the Necessity of guarding Women.

Is it now impossible that there should be such a wise of judicial procedure as the Duties of Man and Wife, since litigation is forbidden, in a controversy between man and wife, by a text of civil law quoted in the *Matsyagharā* (Book III, Chapter I, v. X)? Of this question CHANDRASEKHARA gives a solution: 'Although a wife in the king's court, conducted by the wife and husband as plaintiff and defendant, be forbidden, yet the king may be privately influenced by either of them; and if they deviate from that conduct which is enjoined to them in regard to each other, they must be confined to their own sole duty, by means of punishment and the like demanded by the king: else (if they persist in any other way) they shall be chastised: to substantiate this, the duties of man and wife are propounded under a title of forefathers' precepts.

BOOK IV.

ON THE

DUTIES OF MAN AND WIFE.

CHAP. I.

ON THE

DUTIES OF A HUSBAND.

SECT. I.—*On the Necessity of guarding Women.*

IS it not impossible that there should be such a title of judicial procedure as the Duties of Man and Wife, since litigation is forbidden, in a controversy between man and wife, by a text of civil law quoted in the *Mitâcsharâ* (Book III, Chapter I, v. X)? Of this question CHANDÉSWARA gives a solution: ‘Although a suit in the king’s court, conducted by the wife and husband as plaintiff and defendant, be forbidden, yet the king may be privately informed by either of them; and if they deviate from that conduct which is enjoined to them in regard to each other, they must be confined to their own sole duty, by means of punishment and the like denounced by the king; else, (if they persist in misconduct,) they shall be chastised:’ to intimate this, the duties of man and wife are propounded under a title of forensick practice.

But

But the author of the *Mitâcsharâ* argues, from the law which permits the husband to appropriate the wealth of his wife in certain cases (Book I, v. CCXGI), that, should he dissipate the wealth of his wife in other circumstances than *the pressure of famine* and the like, and refuse to repay it on demand, though he actually possess wealth, a suit between a married couple is in that case admissible. But the litigation of teachers, husbands, and the rest, is not laudable, either in a moral or a civil view; therefore pupils, wives and the rest, should, in the first instance, be discouraged by the king or the court: such is the implied sense of the verse (Book III, Chapter I, v. X). But, in very important cases, even the suits of pupils and the rest may be entertained in the form mentioned.

But others hold, that this verse (Book III, Chapter I, v. X) only prevents the recourse of husbands and the rest to the king's court; for it is declared (Book III, Chapter I, v. XI), that wives and the rest, committing faults, may be corrected by their husbands and so forth: but if husbands and the rest transgress, there is no redress without application to the king. In this text (Book III, Chapter I, v. X) the meaning is, "mutual litigation;" and thus the independence of wives is incidentally forbidden, to establish that law concerning man and wife, and to denounce punishment for a woman asserting independence.

SECT. I.—On the Necessity of guarding

Women.
I.

VRIHASPATI:—This law concerning adultery has been declared; next hear the whole rule of conduct for man and wife, as propounded by me.

"Adultery," corrupting the wife of another. The whole rule, &c. hear the collection of rules for the mode of conduct and behaviour of man and wife towards each other.

II.

MENU:—I now will propound the immemorial duties of man and woman, who must both remain firm

firm in the legal path, whether united or separated.

I will declare the prescriptive duties of man and woman, persevering, whether united or separated, in the path of duty enjoined *by the law*; namely, the mutual fidelity of man and wife. If the mutual duty of husband and wife be violated by one forsaking the other, the transgressor shall be confined to his duty even by penalties imposed by the king; therefore it is mentioned among *subjects of judicial procedure*. CULLÚCABHATTA.

“Immemorial;” the term is explained, in the *Retnácara*, indispensable. “United,” by dwelling in the same house or the like: “separated,” by residing abroad and so forth. But YÁJNYA-WALCYA does not mention the duties of man and wife among forensick matters.

MENU declares the duties of man and woman.

III.

MENU :— Day and night must women be held by their protectors in a state of dependence; *even in lawful and innocent recreations*, being too much addicted to them, they must be kept *by their protectors* under their own dominion.

Women must be ever held in subjection by their husbands or protectors; even in respect of unforbidden recreations, such as matters of beauty and taste, (being *too much* addicted to them,) they must be reduced under their *protectors’* own dominion.

CULLÚCABHATTA.

Consequently they should not even view paintings, eat mixed food, or wear jewels or the like, without the permission of their husbands or other protectors*. If they were in a state of independence, what harm would ensue? NÁREDA declares *the consequence*.

IV.

* The inference, drawn by the compiler, obliges me to alter the version of this text. The passage itself, and the gloss of CULLÚCABHATTA, would bear the construction which Sir W. JONES had put on it. (Chapter IX, v. 2.)

IV.

NÁREDA:—Through independence, even women born of noble families would swerve from their duty; hence the lord of created beings has establish their *perpetual* dependence.

“Noble families;” honourable families. The *Retnâcarâ*.

“They would swerve from their duty;” *literally*, they are utterly lost: they are guilty of disloyalty and other offences; thus, because they know not what is legal and illegal for those who live exactly according to sacred ordinances, (since they are not qualified to study sacred literature;) and because they cannot be instructed, (since they are not in a state of subjection to their husbands, while they assert their own independence;) they would violate the duties of their class and the like for the temporal gratification of enjoying *the society of* strangers, and be perpetually occupied in viewing paintings and the like. Again; if they dispute the authority of their protectors, and covet independence, they shall be compelled by the king, when informed of their misconduct, to abide by their duty.

MENU specifies those who are meant by the term “protectors,” or husbands and the rest.

V.

MENU:—Their fathers protect them in childhood; their husbands protect them in youth; their sons protect them in age; a woman is never fit for independence.

Let her father guard a woman, before her nuptials; afterwards let her husband guard her; and, on failure of him, let her son protect her: therefore a woman shares not independence at any period whatsoever. “Their husbands protect them in youth;” this is indefinite, for sons and others also protect *young widows* remaining with their children. CULLÚCABHATTA.

VI.

VI.

YÁJNYAWALCYA, in the first chapter of his code:—

Let her father guard a maiden; let her husband guard a married woman; but let her son guard her in age: or, on failure of these, let their kinsmen protect her. In no instance is the independence of a woman *allowed*.

“Married;” wedded. “Their kinsmen;” relations of the sons.

The *Chintāmeni* and *Retnācarā*.

Before her hand be taken *in marriage*, let her father preserve her from improper conduct; after that, let her husband guard her; and after his death, *let* her sons guard her in old age: on failure of those who have been mentioned, the kinsmen *protect* her; or if there be none, the king (VII): therefore, “in no instance is the independence of women allowed.”

VIJNYÁNÉSWARA and ‘SÚLAPÁNI.

VII.

*Uncertain**: — But, on failure of *kindred* on both sides, the king is the ruler and protector of a woman.

VIII.

HÁRÍTA: — By violating their *obligation of fidelity* to one only *husband*, and by receiving the embraces of a stranger, vicious women confound families; *for*, a son begotten by an adulterer while the husband is alive is a *cunda*, or, after his death, a *gólaca*: therefore let the husband guard his wife from the assaults of lust. If she be lost *through vice*, the *honour of the family* is forfeited; if that be

* The fragment varies little from a verse subsequently cited (XIII 3). T.

be lost, the *pure succession* of progeny is lost: through that loss, the sacraments of deities and of manes are destroyed; those sacraments being destroyed, duty fails; duty failing, *the husband's* soul is lost; and his soul being lost, every thing is lost.

“ Their obligation of fidelity to one only husband ;” the rule or religious obligation of *fidelity to one only husband*. “ By violating that ;” by failing therein, they confound “ families ” or houses. “ Progeny ;” sons, grandsons, and other offspring.

The *Retnâcara*.

By receiving the embraces of a stranger, women becoming vicious, confound and mingle families and races; for they introduce the offspring of one man into the family of another. “ If the wife be lost,” (if she be guilty of violating her duty,) the past generations, father, grandfather and so forth, are defiled; and thence future successive generations of sons and so forth are defiled. By this defilement of progeny, rites *in honour* of deities and other *religious ceremonies*, are polluted: hence duty is not fulfilled; and the soul, therefore, sinks to a region of torment. Or else, through failure of progeny, the merit of rites performed by a son is not obtained, since the man himself has no male issue: and hence, the purpose of human life is unattained by him; for all the purposes of human life (*wealth, virtue, love of God, and final beatitude*) depend for their accomplishment on the merit of duty *observed*. Thus others explain the text.

IX.

MENU:—Women must, above all, be restrained from the smallest illicit gratification; for, not being thus restrained, they bring sorrow on both families:

2. Let husbands consider this as the supreme law, ordained for all classes; and let them, how weak soever, diligently keep their wives under lawful restrictions:

3. For

3. For he who preserves his wife *from vice*, preserves his offspring *from suspicion of bastardy*, his ancient usages *from neglect*, his family *from disgrace*, himself *from anguish*, and his duty *from violation*.

Women should, especially, be restrained from the smallest illicit gratifications, which produce any evil consequences: much more should they be restrained from the greatest; for, by neglect of restraint, both the families of their husbands and fathers experience sorrow. CULLÚCABHATTA.

The sorrow, *brought on both families*, has been described by HÁRITA (VIII); shame and disgrace *are also brought on them*.

Therefore let husbands know this rule for guarding wives, in the mode described by a subsequent verse, to be the first of all duties incumbent on men of all classes, as well *Bráhmanas* as others: and let even the blind and the lame be diligent in restraining their wives. CULLÚCABHATTA.

“How weak soever:” by this it is intimated, that it is *also* necessary for those who are strong. “Husbands,” or protectors, being expressed in the plural number, comprehend fathers and other protectors above mentioned (V).

Thus, because he who guards his wife, preserves his offspring, since unmixed and undefiled progeny is obtained; and since he preserves approved ancient usages, the honour of his father, grandfather, and the rest of his ancestry, himself, as the parent of pure offspring, and his duty by means of obsequies performed for him by such offspring; (for *all* these are effected through the purity of his wife:) therefore let him be diligent in guarding her. This may be supplied, from what had preceded.

CULLÚCABHATTA.

Thus, the very same is said by MENU, which has been delivered by HÁRITA.

After mentioning mixed classes, PAIT'HÍNASI thus proceeds:

X.

PAIT'HÍNASI:—Therefore guard wives, lest mixed classes should spring from them.

Vigilantly careful lest mixed classes should spring from their wives, let husbands *therefore* guard them.

XI.

*Smṛiti**, quoted in the *Retnācara*:—Cautious men! guard your offspring, and do not suffer the seed of a stranger to be sown in your field: men guard, from the embraces of another, a wife *whom they have married while a virgin*.

This obviates *such* a reflection as the following: “they will guard themselves; why should I *be* diligently watchful?”

XII.

VRĪHASPATI:—A woman must be carefully restrained from the smallest illicit gratification; night and day she should be guarded by her mother-in-law, and by other venerable matrons.

This indicates the subjection of women to their husband's mother and the rest.

XIII.

NĀREDA:—After the death of her husband, *the nearest kinsman on his side* has authority over a woman who has no son; in regard to the expenditure of wealth, the government of herself†, and her maintenance, he has full dominion.

2. If the husband's family be extinct, or the kinsmen be unmanly, or destitute of means to support her,
or

* Quoted from ĀPASTAMBA. See Book V, v. CCLI.

† The preservation of wealth: a various reading in Book V, Chap. VIII.

or if there be no *sapindas*, a kinsman on the father's side shall have authority over the woman :

3. But if the kindred on both sides fail, the king is considered as the protector of the woman ; he shall guard her, and shall chastise her if led away from the path of *virtue*.

“ Kinsman on the husband's side ;” of his father's or mother's race, in the order of proximity. “ Expenditure of wealth ;” gift or other alienation of property. “ Government of herself ;” restraint from illicit gratifications. “ Maintenance ;” means of subsistence. Thus, without his consent, she may not give away any thing to any person ; nor indulge herself in matters of shape, taste, smell or the like : and if the means of subsistence be wanting, he must provide her maintenance. But if the kinsman be “ unmanly,” (deficient in manly capacity to discriminate right from wrong ;) or “ destitute of means to support her,” (if there be no such person able to provide the means of subsistence ;) or if there be no *sapindas* : then, any-how determining, from her own judgment, on the means of preserving life and duty, let her announce her affinity in this mode, “ I am the wife of such a man's uncle ;” and if that be ineffectual, let her recur to her father's kindred : or, on failure of these, recourse may be had even to her mother's kindred ; but, on failure of these, “ the king shall chastise her, if led away from the path of *virtue*.” Consequently, the king has no right to chastise her in the first instance ; but if she desert her husband, or other protector, he is competent to re-establish her guardian's authority ; and he shall not impose a fine on account of her deviation from the path of virtue, but on account of her deserting her protector. Again ; the maintenance of a woman who has no kindred must be assigned by the king. Thus some explain the law.

XIV.

MENU :—Reprehensible is the father who gives not his daughter in marriage at the proper time, and

the husband who approaches not *his wife* in due season; reprehensible also is the son who protects not his mother, after the death of her lord.

A father, not giving his daughter *in marriage* at the proper time for disposing of her in wedlock, is culpable: since a text ordains that a damsel should be given in marriage before her courses, the proper time for disposing of her in wedlock precedes her puberty. A husband, not approaching his wife in due season, is culpable: and a son, not protecting his mother after the death of her lord, is despicable.

CULLÚCABHATTA.

A father not giving *his daughter in marriage*, and a husband not approaching *his wife in due season*, are both culpable in regard to those women; since the natural passion, implanted in the human race by the divinity, is not to be endured. Hence these persons should be punished as offenders: but the woman is not justified in misconduct; for no law permits it. Thus others comment on the text.

XV.

VRĪHASPATI:—The father who gives not *his daughter in marriage* at the proper season, the husband who approaches not *his wife* in due season, and the son who gives not support to his mother, are criminal, and shall be punished according to the law.

If a husband approach his wife in due season, her desire of another man, from a wish to bear issue, is obviated; but if her passions be vehement, she should be approached by her husband at other unforbidden times.

“And the son who gives not support to his mother;” from the word “and” it also appears indispensable that the father or husband should give a maintenance to a daughter or wife. Thus some expound the law.

XVI.

XVI.

VASISHT'HA:—As often as a virgin's courses recur, who desires and demands marriage with a man of equal class, so many beings are destroyed by the fault of her father and mother: thus is the law declared.

XVII.

PAIT'HINASI:—Before her breasts are prominent, a girl should be given in marriage: both he who gives a *damself* in marriage after her menses have appeared, and he who receives *such a damself*, sink to a region of torment; and the father, paternal grandfather, and great-grandfather of *each* are born again in ordure: therefore should a damsel be given in marriage before her menses appear.

If her father be dead, it should be understood that the successor to his wealth, or other competent person, *must give her in marriage.*

XVIII.

YAJNYAWALCYA:—If there be no persons *competent* to give her in marriage, let the damsel herself choose a suitable bridegroom.

XIX.

MENU:—The husband, after conception by his wife, becomes himself an embryo, and is born a second time here below; for which reason the wife is called *jáyá*, since by her (*jáyaté*) he is born again.

The husband, impregnating his wife, assumes the state of an embryo, and is born again of her in the person of his son; that is the very reason for calling a wife *jáyá*, since by her he is born again. CULLÚCABHATTA.

The meaning is, that the word is formed with a termination in the sense of containing; "she in whom he is again generated."

What is deduced from this? The Sage declares *the inference*.

XX.

MENU:—Now the wife brings forth a son endued with similar qualities to those of the father; so that, with a view to an excellent offspring, he must vigilantly guard his wife.

Because it is declared by the law, that she produces a son similar to the father, whether legitimate or illegitimate, (an excellent son, if she submitted to an excellent man; and a bad son, if she submitted to a vicious man;) therefore, with a view to excellent offspring, he must vigilantly guard his wife.

CULLÚCABHATTA.

Thus the expressions of MENU and HÁRITA were suitable: "he preserves his offspring from suspicion of bastardy" (IX 3); and, "the pure succession of progeny is lost by her misconduct" (VIII). And the inferible sense is, that a wife should be guarded with a view to excellent offspring.

XXI.

SANC'HA and LIC'HITA:—Women bring forth sons endued with similar qualities to those of the man on whom their thoughts are fixed in the season of passion; as a black calf springs from a black bull, and a white calf from a white bull. But the influence of the female is great, since mixed classes thence originate.

"Thence"

“Thence” (*from females*) must be supplied.

The *Retnâcara*.

“The influence of the female is great ;” the influence of the wife is greater than that of the husband. Thus, although the husband be endued with excellent qualities, the offspring may be vitiated through the faults of the wife.

XXII.

MENU :—Such *women* examine not beauty, nor pay attention to age, whether *their lover* be handsome or ugly ; they think it is enough that he is a man, and pursue their pleasures.

2. Through their passion for men, their mutable temper, their want of settled affection, and their perverse nature, (let them be guarded in this world ever so well,) they soon become alienated from their husbands.

They do not examine desirable figure ; nor regard youth or age : but, whether a man be handsome or ugly, they think his manhood sufficient, and receive his embraces. Since, at sight of a man, they desire fruition, since their temper is not constant, and since they are naturally void of settled affection, however diligently guarded in this world, they soon become alienated from their husbands, leaning to disloyalty. CULLÚCABHATTA.

No man should be confident, that, on account of his youth and beauty, a woman will not recur to any other man, old or ugly. A woman has no settled tenderness, even for her family and the like. The cause is mentioned : her temper is naturally mutable ; and, through want of settled affection for her husband, she fails in the submission due to him.

XXIII.

MENU :—Yet should their husbands be diligently

careful in guarding them ; well knowing the disposition with which the lord of creation formed them.

Knowing the disposition implanted in them when the universe was framed by the creator, and which disposition is described in the two preceding verses (XXII), let their husbands *therefore* apply the utmost attention to guard them. CULLÚCABHATTA.

Disloyal passion is natural to them, and springs not, *in particular instances*, from *peculiar* defects : and this fault *in their dispositions* should not be imputed to them ; it is derived from nature, and therefore they should not be condemned merely for their mutable temper.

XXIV.

MENU :—MENU allotted to such women a love of their bed, of their seat, and of ornament, impure appetites, wrath, weak flexibility, desire of mischief, and bad conduct.

MENU allotted to women, at their first creation, a propensity to their bed, to their seat, and to ornaments, impure appetites, wrath, weak flexibility, mischievous inclinations, and ill behaviour ; therefore they must be diligently guarded.

CULLÚCABHATTA.

The term explained “ weak flexibility,” may signify crooked proceeding, or fraud. Thus MENU declares their defects natural.

XXV.

MENU :—Women have no business with the texts of the *Véda* ; thus is the law fully settled : having, therefore, no evidence of law, and no knowledge of expiatory texts, sinful women must be as foul as falsehood itself ; and this is a fixed rule.

None of the ceremonies at the birth of children, and so forth, are performed for females with holy texts. This limitation of the law is fully settled. Hence, through the want of solemn rites accompanied with holy texts, they are not divested of sin ; through the want of evidence of law and scripture, they are not acquainted with the system of duties ; and having no expiatory texts, (*that is*, being incapable of expiating a sin actually committed, since they are debarred from the silent repetition of expiatory texts ;) women are as foul as falsehood *itself*. Such is the restriction of the law. Therefore a woman should be vigilantly guarded : this is implied in the text. CULLÚCABHATTA.

“ Having no evidence of law ;” wanting that evidence which induces steadiness in engagements and the like. “ Falsehood :” their conduct is tainted with falsehood. The *Retnācara*.

The text shows a further *cause of the evil disposition* of women naturally ill disposed : at their birth and so forth, rites are not celebrated with holy texts ; hence they are not sanctified. “ Having no evidence of law ;” or, otherwise interpreted, having no organs of sense (*nirindriyāh*) : by this it is intimated that they have no knowledge of what is lawful and unlawful, although they have visual, mental and other faculties. “ And no texts :” by this is denoted their exclusion from the study of the *Vēdas*. From this cause, though *physically* existent, they are *morally* non-existent or false beings. It follows, that women should be avoided, since they are thus vile : and it is shown, that they cannot, of themselves, preserve virtue, or expiate sins. Thus others expound the text.

XXVI.

MENU :—To this effect many texts, which may show their true disposition, are chanted in the *Vēdas* : hear now their expiation for sins.

It has been said, that an inclination to disloyalty is natural to women ; on this point, he cites the authority of the *Vēda* : many revealed texts, which show the true disposition of women, and their disloyal propensity, are read in the *Vēdas* ; hear such of those texts as are solemn expiations for disloyalty. Since only one

text is quoted *, the meaning is, "hear the text:" and the plural number is used for the singular, under the general rule; "any inflection supplies the place of another *in the scriptures and in the works of Sages.*" CULLÚCABHATTA.

"Texts;" passages of holy writ. "The *Vēdas*;" the scriptures. "Their true disposition;" their natural temper. Of those texts of the *Vēda*, hear that which is an effectual expiation for mental disloyalty; that you may know the true disposition of women. The text should be so supplied. The *Retnācara*.

XXVII.

DACSHA:—Like a leech, all women, though won by ornaments, apparel, and furniture, ever exhaust their husbands.

2. Yet a leech sucks a man's blood alone, and *so far* is *more* respectful; but the other draws wealth, gain, flesh, seminal juices, strength, and pleasure.

3. In infancy she is timid, in youth confident; but in age a woman shows *outward* respect to her husband, as *if he were* a king.

4. Left to the guidance of her own will, and unrestrained by affection, she afterwards becomes ungovernable, as a neglected disease *becomes incurable.*

"Her own will;" her own desires. "Ungovernable;" highly mischievous. The *Retnācara*.

Though won by ornaments, apparel and furniture, she exhausts her husband, as a leech sucks the human body. Therefore, as a leech, steadily adhering to the body of a man, sucks and drinks his best blood, so do women act. He adds to the illustration: since a leech sucks the blood alone, it is respectful in comparison with women; but these draw wealth, and the rest of six things mentioned.

In infancy she is fearful; in youth she asserts equality; in age she

she respects her husband no more than grass, for *his* youth is past. On the other reading (*nrīpa vat* like a king, instead of *trīna vat* like grass,) the sense is this; that she herself may be esteemed even without youth *to render her amiable*, she honours her husband, like a king, with affected respect.

Conducting herself according to her own will, and unrestrained by the apprehension of violating affection, a woman deviates from the path of duty, (she follows not that which is ordained to be the path of virtue;) as a disease, such as a fever or the like, suffered to remain in the body, and, through tenderness, unopposed by a cooling regimen, becomes incurable through the want of medicaments.

XXVIII.

The *Rāmāyana*:—To women, not any man is *solely* dear, nor is any one hateful; they embrace every man, as a creeper, growing in the forest, *clings to every tree within its reach*.

Therefore, it should not be trusted that there is no apprehension of a woman's desiring some man who is *apparently* hateful to her. She must be guarded from all.

XXIX.

The *Mahābhārata*:—Women, though born in noble families, *themselves* beauteous, and married to *worthy husbands*, remain not within the bounds of duty; this, NAREDA, is the fault of women:

2. From the want of a motive *for deviation*, or through fear of the people or of their kindred, unbridled women may remain within the bounds of duty, *faithful* to their husbands;
3. But neither through fear *of moral law*, nor through severe reprehension, nor from any motive of *regard* for

for wealth, nor on account of their connexion with kindred and family, are women constant to their husbands.

4. Matrons envy women who live by prostitution, the *bloom of* youth they possess, and the food and apparel they receive.

5. Though men be lame, divine Sage ! or otherwise contemptible, there is not any man in this world, great Sage ! insufferable to women :

6. If they have no possible access to men, *O thou inspired by BRAHMA !* they seduce each other ; truly they are not constant to their husbands :

7. From not finding men, or through fear of their kindred, or apprehension of stripes or confinement, they guard themselves :

8. But fire is not fatiated with wood, nor the ocean with rivers, nor death with all beings, nor woman with man,

9. This, divine Sage ! is another hidden quality of all women ; at the very sight of a handsome man, the heart of a woman melts with desire.

10. Women bear not much *affection* to their husbands, though giving them what they desire, doing what they wish, and protecting them from danger :

11. They do not so much value the gratification of their wishes, abundance of ornaments, or hoards of *wealth*, as they do sensual pleasures.

12. Final destiny, wind, death, the infernal regions, the fire of the ocean, the edge of a razor, poison, venomous serpents and *devouring* fire, all united, are *no worse than women* *.

In

* I think it unnecessary to subjoin the comments to these texts, on which it is unpleasant

In fact, all these texts, describing the wickedness of women, only imply that confidence should not be placed in them, and show that they are sinful from their want of knowledge to distinguish what is lawful and unlawful. But, at particular times, men also follow implicitly the dictates of lust. Accordingly the *Mahābhārata* expresses, "all creatures, overcome by lust and wrath, sink, &c.;" and, at times, women are found most loyal and constant, as SÁVITRI and others.

SECT. II.—*On the Method of guarding Women.*

IF, then, women regard not their protectors, how can they be preserved from vice? In answer to this question, MENU declares the expedients by which they may be guarded.

CHANDÉSWARA.

XXX.

MENU:—No man, indeed, can wholly restrain women by violent measures; but, by these expedients, they may be restrained:

2. Let the husband keep his wife employed in the collection and expenditure of wealth, in purification and *female* duty, in the preparation of daily food, and the superintendence of household utensils.

"Household utensils;" or it may mean *female ornaments*, as bracelets, ear-rings, and the like.

No man is able *wholly* to preserve women from vice, even by forcible restraint; for still they will manifest disloyalty. But, by these

unpleasant to dwell: the subsequent remark does away the literal application, as the texts quoted in the next section (particularly V. xciv) do away the universal censure. T.

these means, he may restrain them. The Sage mentions those means (XXX 2): by keeping a wife employed in the accumulation and disposal of wealth, in the purification of effects and of *her own* person, in the care of the *sacrificial* fire and the like, in the preparation of food, and in the superintendence of household utensils, as beds, seats, jars, earthen vessels, and the like.

CULLÚCABHATTA.

Others explain “purification and *female* duty,” sweeping the house and cleaning the vessels used at meals and the like. “Preparation of food;” and the presenting of it, and so forth. Occupied in such offices, their minds are calm; hence, and from want of leisure, every wish for commerce with other men is prevented. This artifice MENU declares to be an expedient for restraining women.

XXXI.

VRĪHASPATI:—The keeping women employed in the receipt and expenditure of wealth, in the preparation of food, in the superintendence of the household utensils, in purification, and in the care of the *perpetual* fire, is declared to be the mode of restraining women.

“In purification;” or in the business of cleanliness, as sweeping the house and the like. “In the care of the fire;” in keeping it for the daily oblations of those who maintain a perpetual fire.

XXXII.

MENU:—By confinement at home, even under affectionate and observant guardians, they are not secure; but those women are truly secure, who are guarded by their own good inclinations.

Guardians, who are both affectionate and observant.

The *Retnâcara*.

Though

Though confined at home, even under persons who are both affectionate and authoritative, those women are not secure, who, from their evil disposition, guard not themselves; but they who, excelling in virtue, guard themselves, are truly secure. Therefore a rule of *conduct* should be prescribed to them by announcing the attainment of heaven through the practice of virtue, and punishment in hell for habits of vice. This is declared to be the chief expedient for restraining women. CULLÚCABHATTA.

XXXIII.

MENU:—Whatever be the qualities of the man with whom a woman is united by lawful marriage, such qualities even she assumes; like a river *united* with the sea.

2. ACSHAMÁLÁ, a woman of the lowest birth, being thus united to VASISHT'HA, and 'SÁRANGĪ, being united to MANDAPALA, were entitled to very high honour:
3. These, and other females of low birth, have attained eminence in this world by the respective good qualities of their lords.

A woman, though *naturally* sinful, imbibes virtue from her intercourse with a husband who gives the example of it, and she becomes deserving of respect; but a woman, even though naturally virtuous, becomes vicious by intercourse with a vicious man. He illustrates this by a comparison; as sweet water, falling into the ocean of salt water, becomes salt, or falling into the ocean of milk, *becomes milk*, and so forth. ACSHAMÁLÁ (XXXIII 2) was the name of a certain woman married to VASISHT'HA; and 'SÁRANGĪ' was a female bird, married to a Sage named MANDAPALA.

“These, and other females;” *in the plural number instead of the dual*: on this CULLÚCABHATTA observes, that, although two only are here celebrated, “these” is expressed in the plural number, because those two are only intended as instances. Others think,

think, it is expressed in the plural to convey the sense of “ and the rest ;” the meaning therefore is, “ these two and the rest, as well as other females.”

XXXIV.

MENU :—Thus has the law, ever pure, been propounded for the civil conduct of men and women: hear next the laws concerning children, by obedience to which may happiness be attained in this and the future life.

“ Civil conduct of men and women;” the protection to be given by a man to a woman : or the conduct to be observed in this world ; that is, the protection afforded by men to women. Happiness may be attained after death, since heaven is attained ; and in this life, by the *very* preservation of a wife, and so forth.

If women be naturally vicious, and be guarded with *such* difficulty, should not marriage be avoided ? To obviate this doubt, he declares the production of children to be the motive of marriage.

XXXV.

MENU :—When good women, united with husbands in expectation of progeny, eminently fortunate and worthy of reverence, irradiate the houses of their lords, between them and goddesses of abundance there is no diversity whatever.

2. The production of children, the nurture of them when produced, and the daily superintendence of domestick affairs, are peculiar to the wife.

3. From the wife alone proceed offspring, good household management, solicitous attention, most exquisite caresses, and that heavenly beatitude which she obtains for the manes of ancestors, and for *the husband* himself.

Although

Although their defects have been declared for the sake of *showing the necessity* of their being guarded ; yet, as a remedy is possible, these women, married for the sake of producing children (who are greatly beneficial *to their parents*), become the cause of their husband's partaking of eminent prosperity, are entitled to reverence shown by gifts of apparel, ornaments and the like, and render their own houses pure. In such houses, women and goddesses of abundance are equal ; there is no diversity whatever : as a house, unvisited by the goddesses of abundance, does not flourish ; so a house, deprived of women, thrives not.

CULLÚCABHATTA.

“ Goddesses of abundance ;” the term may signify either beauty, or the goddesses LACSHMÌ. The production of children, and the purification of the house, are not the only purposes of marriage : the Sage mentions others (XXXV 2).

The construction is this ; “ the daily business of civil conduct is peculiar to women.” The *Retnâcara*.

The production of children, the nurture of them when born, and the daily superintendence of wordly affairs, (such as the entertainment of guests, kinsmen and friends,) are peculiar to women.

CULLÚCABHATTA.

The Sage enumerates the several qualities of women, both those already noticed, and those which had not been mentioned (XXXV 3).

The production of children, though already mentioned, is repeated, to show that women are worthy of reverence ; *that*, and offices in which religious duty is concerned, (as the care of the perpetual fire and the like,) solicitous attention, (*personal* attendance,) exquisite caresses, and heaven obtained for his ancestors and himself by the production of children ; all these proceed from the wife.

CULLÚCABHATTA.

But we thus explain the text ; offspring, the nurture of children, and exquisite caresses, *proceed from the wife* ; as mentioned in the *Cálicá purâna*,

“ The wife affords delight and male offspring.”

From her proceeds heavenly beatitude, obtained through the rites to be performed in the order of a householder ; there is not, consequently,

sequently, any needless repetition. Thus a text of law, quoted in the

Udvāha tatvā, expresses:—"The wife call not the habitation *alone* the home, *for* the wife is described by that name (*grīha*); with her, indeed, a man attains all the purposes of human life."

And another text, inserted in the same compilation, declares incapable of sacrifice, a man who has no wife, and has not passed the age of forty-eight years :

"Until he have attained the age of forty-eight years, a man who has neither son nor wife is disqualified for performing the sacrifice."

XXXVI.

YĀJNYAWALCYA:—Perpetuated offspring and a heavenly abode are obtained through a son, a grandson, and a great-grandson; therefore should virtuous wives be respected, cherished, and well guarded.

XXXVII.

The *Mahābhārata*:—These women, *graced* with the name of goddesses of abundance, should be treated with honour by him who desires wealth: BHARATA! a lovely woman, restrained from vice, is a goddess of abundance.

MENU declares them "worthy of reverence;" the *Mahābhārata* declares, they "should be treated with honour;" and subjoins a motive for treating them with reverence :

XXXVIII.

XXXVIII.

The *Mahábhárata* :—Where females are honoured, there the deities are pleased; but where they are un- honoured, there all religious acts become fruitless.

2. When female relations are made miserable, even then is that family annihilated; *for*, the houses on which they pronounce a curse *perish*, as if destroyed by a deadly sacrifice:

3. *Those houses*, king of the earth! neither flourish nor increase, which are not graced by the goddesses of abundance.

“Female relations;” sisters, and women of a family.

AMERA.

The meaning is, that houses on which female relations pronounce a curse, (on which they pronounce an imprecation in consequence of suffering from the want of a suitable maintenance and the like,) are extirpated.

XXXIX.

MENU :—Where females are honoured, there the deities are pleased; but where they are dishonoured, there all religious acts become fruitless.

2. Where female relations are made miserable, the family of him who makes them so very soon wholly perishes; but where they are not unhappy, the family always increases.

3. On whatever houses the women of a family, not being duly honoured, pronounce an imprecation, those houses, with all that belong to them, utterly perish, as if destroyed by a sacrifice for the death of an enemy.

4. Let those women, therefore, be continually supplied with ornaments, apparel, and food, at festivals and at jubilees, by men desirous of wealth.

“Female relations ;” the women of a family, as sister, son’s or nephew’s wife, and the rest. The *Retnâcara*.

“Are made miserable ;” are made wretched, from the want of maintenance or the like. “Perish, as if destroyed by a sacrifice ;” by a fire *lighted for a sacrifice to be made* for the death of an enemy : a rhetorical simile.

XL.

MENU: — In whatever family the husband is contented with his wife, and the wife with her husband, in that house will fortune be assuredly permanent*.

XLI.

The *Mahâbhârata* :—*Women* must be honoured and adorned by their own fathers and brethren, and by the fathers and brethren of their husbands, if they seek abundant prosperity.

XLII.

MENU: — *Married women* must be honoured and adorned by their fathers and brethren, by their husbands, and by the brethren of their husbands, if they seek abundant prosperity.

XLIII.

YĀJNYAWALKYA :—Females must be honoured by their

* Cited again at V. clxxxix, 1.

their husbands, brothers, fathers, and paternal kinsmen; by the fathers, mothers, and brethren of their husbands; and by *all* kinsmen; with *gifts of ornaments, apparel, and food.*

Gifts of ornaments and the rest, as *tokens of reverence.*

The *Dīpacalīcā.*

To the virtuous women, already described, must reverence be shown by their husbands and the rest, with ornaments, apparel, food, blossoms, and the like, to the utmost of their power, that, being honoured, they may advance the virtue, wealth, and pleasures of their kindred.

The *Mitācsharā.*

“Blossoms;” to be placed in the tresses of their hair.

In the third chapter of his work, on the subject of an Embryo in the third month of pregnancy, YÁJNYAWALCYA has the following text:

XLIV.

YÁJNYAWALCYA:—By not gratifying the longings of a pregnant woman, the embryo suffers injury, becomes deformed, or even perishes; therefore should women be treated with affection.

From what has been stated, it appears that reverence must necessarily be shown to a wife, sister, and the rest, by gifts of food and clothes, and of ornaments, bestowed according to his ability by her husband, her brother, or some wealthy relation, as the case may be: this is a settled rule. If it be not done, the omission is punished with misfortune, for texts show that the family perishes: therefore women shall not, *in such cases*, apply to the king; but he being privately informed, must compel their relations to supply them with food and the like; and the rule must be settled as in the supplementary chapter of the code of law.

XLV.

MENU:—Should a man have business abroad, let him

him assure a fit maintenance to his wife, and then reside *for a time* in a foreign country; since a wife, even though virtuous, may be tempted to act amiss, if she be distressed by want of subsistence:

2. While her husband, having settled her maintenance, resides abroad, let her continue firm in religious austerities; but if he leave no support, let her subsist by *spinning and other* blameless arts*.

But if her husband go to a distant abode without providing for her subsistence, clothing, and the like, let the woman live by spinning and other blameless arts. CULLÚCABHATTA.

XLVI.

MENU:—When twice-born men take wives, both of their own class and others, the precedence, honour, and habitation of those wives must be settled solely according to the order of their classes.

When twice-born men marry wives, both of their own class and of other tribes, then the precedence in regard to respectful language and superior share of the heritage, honour shown by gifts of apparel, ornaments and the like, and habitation or preferable apartment of those wives, must be settled according to the order of the classes. CULLÚCABHATTA.

Others hold the precedence to be that which is announced in the subsequent text; namely, the duties of the eldest wife, personal attendance, and the like.

XLVII.

MENU:—To all such married men, the wives of the same class only (not wives of a different class by any

* See V. cxvi.

any means) must perform the duty of personal attendance, and the daily business relating to acts of religion.

Attendance on the person of her husband (as presenting food to him and the like), business relating to acts of religion (as the distribution of alms and the like, the entertainment of guests, and the care of the sacrificial utensils), and other daily business, the wives of the same class only must perform for twice-born men; not wives of a different class by any means.

CULLÚCABHATTA.

Disputes between his wives must be thus reconciled by the husband: and this supposes that he has a wife of the same class with himself.

XLVIII.

YÁJNYAWALCYA:—If he have a wife of equal class, let him not employ another in business relating to acts of religion; *but* if there be several wives of his own class, such duties are lawfully performed by no other than the eldest.

If there be a wife of equal class, he shall not employ another in business relating to religious duty; but if there be several wives of his own class, then he shall not employ any other than the eldest of them *in such offices*: hence, if the first married wife be alive, she must be preferred in all matters relating to acts of religion.

CHANDÉSWARA and VIJNYANESWARA.

If a wife of equal class be alive, he shall not employ one of unequal class in the care of the sacrificial fire and the like; if there be several wives of his own class, he must so employ the eldest alone. Another case is mentioned in the *Ch'handôga pe-rîsîhta* (L 3)*.

SÚLÁPANI.

Some remark, that two or three cases might be established, if

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the

* The text is cited anonymously at full length; but differing from another text in one word only, and that not affecting the sense. I refer the citation to that other text, subsequently quoted from CA'TYA'YANA. T.

the youngest wives be pre-eminent in virtue, or if several were married at the same time*. But the uncertainty as to the rule to be followed *in such cases*, is not liable to any objection: for the text only directs honour to be shown as enjoined; and the rest is mentioned in another place.

XLIX.

VISHNU: — If many wives of his own class be living, with the eldest alone should the husband conduct business relating to acts of religion, even though his younger wives be dearer to him; but if there be no wife of equal class, the business may, in a case of distress, be executed by that wife only who is of the class next below him: yet let not a twice-born man ever *perform holy rites* with the aid of a 'Súdrá wife.

If there be no wife equal in class, the business relating to acts of religion may be accomplished by her who belongs to the class next below him. This is also intimated by MENU; “the precedence must be settled according to the order of the classes” (XLVI). “But let not a twice-born man ever perform holy rites with the aid of a 'Súdrá wife:” this denotes, *that he may not do so*, even though he have no wife of any other class but that of the 'Súdrá; else the terms of the text would be unmeaning. To fulfil their duty, twice-born men should marry women of twice-born classes: and, from the expression “the business may in a case of distress be executed by a wife of the class next below him,” and from that which immediately follows “but let not a twice-born man ever &c.” it is deduced, that a *Bráhma*na, in the utmost distress, may even employ a wife of the commercial class in such offices. Thus some expound the law,

L.

* By eldest wife is meant, not the eldest woman, but the wife first married; and after her death, the next married has not a right exactly to the same precedence, because she is not the wife married *from a sense of duty*: this will be evident in the sequel, T.

L.

CÁTYÁYANA, quoted in the *Ch'handóga peris'isht'a* :

—Let him who has many wives employ one of equal class in the care of the sacrificial fire, and in attendance on himself; but if there be many such, let him employ the eldest in those duties, provided she be blameless :

2. Or he may employ in such offices any one of them who is mother of an eminent son, who is obedient to his commands, affectionate, capable of good management, kind in discourse, and well disposed :
3. Or without partiality, he may perform the rites of religion with all his wives successively, in periods settled according to *their respective* precedence, or settled of his own authority to the best of his knowledge.
4. We know that the precedence of women originates in fortunate destiny ; nor can a husband, by a slight show of reverence, content wives of twice-born classes :
5. That woman gains a fortunate destiny, who, constantly obsequious to her husband, worships BHAVÀNÌ in this world with many acts of austerity, and reverently attends the sacrificial fire.

If there be many of them, and the eldest wife be blameless, he must employ her in matters relating to acts of religion : but if the eldest wife be blameable, then, since there is no certainty which should be employed among several wives equal in class, it should be determined by the second rule (L 2). The *Retnâcara*.

“ Mother of an eminent son ;” one who has borne a blameless son. If the eldest of all the wives be censurable, and the rest be equal *in merit*, they should, according to circumstances, be

employed in such duties in daily succession : this some think to be fully intended in the *Retnâcara*.

He who has wives both of his own class and of others, should assign to the wife of equal class the care of the *sacrificial* fire, the hospitable entertainment of strangers, and attendance on himself ; but if there be many of his own class, to the eldest wife, provided she be not disabled by sickness, nor chargeable with a vicious disposition or the like. On another reading (*agni s' ishtyâdi sufrûsbâm*, instead of *agni s' ishtâtma sufrûsbâm*, care of the *sacrificial* fire, and attendance on himself,) the sense is, attention to his commands in respect of supplying the fire and the like, and other attendance on her husband.

Or he may constantly employ, in the care of the sacrificial fire and other offices relating to acts of religion, and in attendance on his own person, that wife among those of equal class who is mother of a son ; or, avoiding partiality, he may perform the daily rites of religion with the assistance of his wives in regular succession, allowing five days and so forth to each according to their respective precedence, or distributing periods of his own authority and to the best of his knowledge. The precedence of women depends on their fortunate destiny : hence the precept for employing the eldest wife in *personal* attendance supposes her eminently fortunate ; and that fortunate destiny has been obtained by obedience to her husband, by many austerities, by worship of BHAVÂNÍ, and by attention to the sacrificial fire, in a former existence. Therefore a woman, though eminently fortunate in her present existence, should pay adoration to BHAVÂNÍ and so forth, for the sake of auspicious fortune in a future birth. This states the conduct incumbent on women ; the preceding texts (L 1, 2 & 3) had stated the conduct incumbent on the husband.

The *Perisishṭa Pracaśa*.

“ Precedence originates in fortunate destiny :” this supposes superiority in virtue, since that is expressed in the last verse. The woman of equal class is superior to all the rest ; for the approbation of the law prevails over the affection of the husband. “ Not by slight show of reverence, &c :” thus, since what is executed by an auspicious wife is best executed, she is best qualified for offices pertaining to acts of religion. Thus others expound the law.

LI.

DACSHA:—The first is the wife married from a sense of duty : the second promotes sensual gratification ; sensible, not moral effects proceed from her.

2. The first wife is called the wife whom acts of duty concern, provided she be faultless ; but if she be faulty, there is no offence in employing another wife endued with excellent qualities.

“ The wife whom acts of duty concern ;” who officiates in acts of religion, and so forth. From the second wife proceed sensible effects, (subject to the test of sensation, as the present gratification of caresses and the like ;) not moral effects, or the last solemn rites and the rest of the acts relating to another world and so forth. But moral consequences follow the production of a son ; that, however, in a successive order, *by the birth of a son from the second wife, if the eldest wife be childless*. From this text it appears, that the seniority noticed in former texts (XLVIII and XLIX) is settled, not according to age, but according to the priority of nuptials. This is the principal case : he mentions a secondary one (LI 2) ; if the eldest wife be faulty, there is no offence in employing another on business relating to acts of religion ; therefore another wife, endued with excellent qualities, should be employed.

The wife described in the *Ch'handōga perisishṭa* (L 2) should be considered as the wife endued with excellent qualities ; if there be no such grounds for selection, it may be settled as directed in the *Ch'handōga perisishṭa* (L 3). Since the *Ch'handōga perisishṭa* * completes the extracts of the *Sāma-vēda*, the adjustment by successive daily periods should be admitted without question by all followers of the *Sāma-vēda* ; for, were it questioned *by any person*, it must be admitted, even though directed by another *than the particular 'Sāc'hā, by which that person is governed*. For it is said, “ what is enjoined in their own '*Sāc'hās*, or declared by another, but

* The meaning of the name is “ consummation, or completion, of the followers of the *Sāma-vēda*.” T.

but not inconsistent with their own, should be followed by the wife, as the practice of maintaining a perpetual fire and the like."

LII.

MENU and VISHNU, after mentioning a *Súdrá* wife:—His sacrifices to the gods, his oblations to the manes, and his hospitable attentions to strangers, must be supplied principally by her: but the gods and manes will not eat such offerings; nor can heaven be attained by such hospitality.

Of him whose sacrifices to the gods, whose oblations to the manes, whose hospitable attentions to strangers, are supplied by a wife of the servile class, the gods and manes will not eat the offerings; nor does he attain heaven. The *Retnácara*.

Since the gods and manes eat not his offerings, he does not attain heaven; and his daily rites are unfulfilled. Although guests eat the food with a corporeal mouth, still the duty of hospitable attention is not thereby truly fulfilled: consequently he attains not heaven. If any person, through ignorance, follow a path repugnant to these rules, the king, any-how informed of it, should investigate the matter and restrain him. This construction must be admitted; else the text (XLVI), and others on the same subject, are uselessly placed under the title of Judicial Procedure, in the institutes of MENU,

LIII.

DACSHA:—Dwelling in a house, *as a householder* is practised for the sake of happiness, and that happiness depends principally on the wife; she is *indeed* a wife, who is attentive to precept, obedient to command,

2. And obsequious *to her lord*; who never speaks unkindly; who is careful in household management,

ment, virtuous, and prolific : a woman, endued with such qualities, is no doubt a goddess of abundance.

3. She whose temper is cheerful, who is ever attentive to her place, respectful and affectionate to her husband, is *truly* a wife ; any other is useless.

“ For the sake of happiness ;” since happiness may be attained in another order besides those of devotion. “ Who never speaks unkindly ;” who avoids harsh language. “ Her place ;” her habitation, bed, seat, and the like. “ Respectful ;” reverent. This details the qualities intended by the expression “ endued with excellent qualities.”

LIV.

VYÁSA :—Let the wife of a virtuous man rise before him, be diligent in household management, repose on an humbler bed and seat, avoid unkind discourse, and pursue his benefit.

After the husband and wife have slept through the night, let her rise first, at dawn of day ; let her not require an equal bed and seat ; and let her perform that by which her husband may be benefited,

LV.

DACSHA :—With sorrow does he eat who has two contentious wives ; dissention, mutual enmity, meanness and pain *distract his mind*.

But, although he have two wives, if they be complacent, his food is tasted with pleasure ; no strife or contention exists ; no mutual enmity ; no endurance of pain ; no sorrow.

LVI.

LVI.

MENU :—For a whole year let a husband bear with his wife, who treats him with aversion ; but after a year, let him deprive her of her separate property, and cease to cohabit with her.

With his wife, who has contracted a dislike of her husband, let him be patient for a whole year ; but, after that period, taking back from his wife, who treats him with aversion, the ornaments and other property given by himself, let him cease to approach her : but mere food and clothes must be allowed to her.

CULLÚCABHATTA.

That her hatred should be endured for a whole year, is approved ; within that period, a husband, proposing to forsake her, should be prevented, by the interposition of friends, and by other means of conciliation : but, after a year, there is no offence in his forsaking her.

LVII.

MENU :—She who neglects her lord, though addicted to gaming, fond of spirituous liquors, or diseased, must be deserted for three months, and deprived of her ornaments and household furniture :
2. But she who is averse from a mad husband, or a deadly finner, or an eunuch, or one without manly strength, or one afflicted with such maladies as punish crimes, must neither be deserted nor stripped of her property.

That woman who, omitting due attention and the like, neglects a husband addicted to gaming and similar vices, fond of inebriating liquors, or diseased, must be unapproached for three months, and deprived of her ornaments, her bed, and other furniture.

CULLÚCABHATTA.

Here one addicted to intoxication, but not degraded, is meant.

As

As her neglect of a depraved husband is a slight offence, the punishment is small ; but if she repeatedly neglect him, it is proper that she should be repeatedly forsaken.

But she who attends not a husband, whose mind is alienated by the effect of air or other constitutional element, or a deadly sinner (as described in the eleventh chapter), or unmanned, or destitute of manly strength (from an obstruction of the seminal juices or the like), or degraded, because he is afflicted with leprosy or a similar disease, must not be deserted, nor deprived of her property.

CULLÚCABHATTA.

“ As described in the eleventh chapter ;” for there crimes in the first degree and so forth are mentioned*.

“ One without manly strength ;” impotent, though apparently possessing manhood. “ Aversion from a husband ;” want of diligent attention, not absolute desertion ; for a text declares,

LVIII.

A husband, who is not an outcast, should not be forsaken by women desirous of happiness in another world.

And it is *thus* shown, that a husband who is not degraded may not be forsaken.

LIX.

NÁREDA :—A husband who abandons an affectionate wife, or her who speaks not harshly, who is sensible, constant, and fruitful, shall be brought to his duty by the king with a severe chastisement.

A husband deserting a wife endued with excellent qualities, to connect himself with another wife and so forth, incurs a severe chastisement ; that is, the punishment of a thief : for, on the subject of the punishment of robbery,

LX.

* Chap. XI, v. 55, &c.

LX.

VISHNU *says* :—The man who deserts a faultless wife, *shall suffer the same punishment.*

LXI.

DÉVALA :—No atonement is ordained for that man who forsakes his own wife, through delusion of mind, deserting *her* illegally ; nor for him who forsakes a virtuous son.

“ Deserting illegally ;” abandoning *her* contrary to law.

The *Retnâcara*.

“ Deserting illegally ” is an epithet of the preceding term ; thus the sense is, “ that man who abandons his wife illegally, or forsakes a virtuous son.”

LXII.

DÉVALA :—A man may exclude from his bed, or from pilgrimage (*for the term is explained in both senses*), a wife who is afflicted with leprosy, degraded from her class, barren, or insane, whose courses are stopped, or who is wicked ; but *he may not exclude her* from all business.

“ From his bed ;” according to the *Retnâcara*. Others expound it “ from pilgrimage,” but in a general sense, comprehending caresses and the like.

“ *Not from all business ;*” not from business of which she is capable.

SÚLÁPANI.

Women afflicted with leprosy, and the rest, are excluded from sexual intercourse : commerce with their husbands is forbidden ; but they are not universally excluded from all business. However, women degraded from their class, and the rest, are also re-
jected

jected in matters pertaining to acts of religion. Of these women, she who is afflicted with leprosy is debarred from commerce with her husband, because intercourse is improper; she who is degraded, lest a taint of sin be contracted from her; she who is barren, because it would be vain; she who is insane, because the text forbids it, or because she is considered as tainted with sin; she whose courses are stopped, because *the probability of conception* may be questioned; and she who is wicked, because she is an object of aversion.

LXIII.

NÁREDA :—It is a crime in them both, if they desert each other, or if they persist in mutual altercation, except in the case of adultery by a guarded wife.

2. Let a man banish from his house a wife who embezzles all *his* wealth under pretence of female property, or who procures an abortion, or who wishes the death of her husband.

“Crime;” sin.

The *Retnâcara*.

Unless a wife, who is diligently guarded, be disloyal, both husband and wife, forsaking each other, are guilty of a heinous sin; but there is none in abandoning a disloyal wife. Thus some expound the text.

“Who embezzles all *his* wealth, under pretence of female property;” one by whom all property is embezzled as female property.

The *Retnâcara*.

That is, as her own female property.

A wife by whom all *his* wealth is falsely included in female property.

The *Galpa drúma*.

“Let him banish from his house;” banishing her from the principal habitation, let him assign her a *separate* dwelling within his close. Thus some expound the law.

LXIV.

Uncertain :—Let him banish from the house a wife
who

- who constantly dissipates wealth, and who speaks unkindly, and her who eats before her husband :
2. Let him never dignify with his love a barren wife, nor her who bears only daughters, nor one who is ever contumacious ; if he do, he partakes of her faults.

LXV.

- MENU :—That woman, who, having bathed after her courses, refuses the approaches of her husband, let him banish, proclaiming her, in the middle of the town, guilty of infanticide.
2. And her who, through aversion from her husband, falsely pretends to have her courses, let him banish, proclaiming her, in the presence of kinsmen, guilty of infanticide.

“ Aversion ;” hatred. In the preceding case a motive is supposed in the want of affection, but short of hatred : thus the texts are not without a difference.

Or the last text relates to many instances of *deception in regard to her courses ; the first concerns a single refusal*. The *Retnâcara*.

“ Proclaiming her offence ;” announcing her guilty of infanticide ; because she has opposed the procreation of an embryo, declaring her equally guilty with the slayer of an infant. Her refusal of going near her husband is the subject of the first text ; the subject of the second is her refusal of his caresses, through hatred, though she have attended him. Such is the distinction according to other *lawyers*. On this construction, since the first case does not clearly state a motive different from hatred, the sense of the last text is included in the first ; if she deceive her husband many times in regard to her menses, she has of course deceived him in one instance.

LXVI.

BAUDHĀYANA :—Prudent men forsake a wife who
2 neglects

neglects due attendance, who is barren, or immoral, or who frequents the houses of strangers; *they* instantly *forfake* one who speaks unkindly:

2. In the tenth year a man may forfake one who bears no children; in the twelfth, one who bears daughters only; in the fifteenth, one whose children are *all* dead; but instantly one who speaks unkindly.

“Immoral;” vicious. “They instantly forfake one who speaks unkindly:” they forthwith abandon her. Thus, a man should endeavour to reclaim one who neglects due attendance and so forth; but no such endeavour is used with one who speaks unkindly. A man may forfake a barren wife in the tenth year after the period when pregnancy might have been expected; and one whose children are *all* dead, in the fifteenth year after the death of her children.

LXVII.

MENU:—A wife who drinks any spirituous liquors, who acts immorally, who shows hatred *to her lord*, who is *incurably* diseased, who is mischievous, who wastes his property, may at all times be superseded by another wife.

A wife who is addicted to the use of any forbidden spirituous liquor, whose conduct is vicious, who is disposed to act in opposition to her husband, who is afflicted with leprosy or other *similar* disease, who is disposed to injure her husband, and who continually squanders *his wealth*, may be superseded; that is, another marriage may be contracted, though she be living.

CULLÚCABHATTA.

A *second* marriage, or one subsequent to her's, contracted by her husband, is supercession.

LXVIII.

YÁJNYAWALCYA :—One who drinks inebriating liquors, who is *incurably* diseased, who is quarrelsome, or barren, who wastes his wealth, who speaks unkindly, who brings forth only daughters, may be superseded by another wife; and so may she who manifests hatred to her husband.

Who drinks spirituous liquors, whether she be of the servile or other class; for the prohibition is general.

LXIX.

Half his body perishes, whose wife drinks intoxicating liquors.

“Diseased” (LXVIII); infected with a lasting malady. “Quarrelsome;” contentious. “Barren;” unprolific. “Who wastes his wealth;” who dissipates his property. “Who speaks unkindly;” whose discourse is evil. “Who brings forth daughters;” who bears daughters only. “Who manifests hatred to her husband;” who acts, on every occasion, injuriously to him.

The *Mitácshará*.

“One who drinks inebriating liquors;” meaning the wife of a twice-born man. “Diseased;” and therefore incapable of household affairs. “Quarrelsome;” or wilful. Naturally “barren.” “Who attempts her own life” (for the gloss substitutes *átmaghni* for *art’haghni*); who attempts suicide by hanging herself or otherwise. “Who speaks unkindly;” ‘to her husband’ must be supplied. “Who brings forth daughters;” who bears only daughters. “Who manifests hatred to a man;” who detests the son of her husband by another wife, and so forth.

The *Dípacalícá*.

The text cited (LXIX) concerns a twice-born man; for those who are not degraded in consequence of drinking spirituous liquors themselves, are not degraded in consequence of their wives

drinking intoxicating liquors. Such is the opinion intimated in the *Dīpacalīcā*. The wives of those who are not permitted to drink inebriating liquors must be forsaken, if they be addicted to the evil practice of intoxication from drinking such liquors; for they are degraded: but the desertion of all degraded women is enjoined in another text. This remark is made by other *commentators*.

LXX.

MENU:—A barren wife may be superseded by another in the eighth year; she whose children are all dead, in the tenth; she who brings forth *only* daughters, in the eleventh; she who speaks unkindly, without delay.

In the eighth year of barrenness, counted from the first season, she may be superseded; one whose children are *all* dead, in the tenth; and one who bears *only* daughters, in the eleventh: but she who speaks unkindly, without delay, provided she have no son; *for*, if she have male issue, she may not be superseded, since that is prohibited by another Sage (LXXI).

CULLÚCABHATTA.

LXXI.

If his wife be virtuous, and have borne a son, let not a man contract another marriage, unless he do so on *the loss of his wife or son*.

“Virtuous” here intends speaking affectionately and so forth. No inconsistency with the text of BADUHÁYANA (LXVI) can be here alleged; for he speaks of desertion, but MENU speaks of a second marriage. It must be noticed, that it appears from the text of MENU (LXX), which permits the supersession of a barren wife in the eighth year and so forth, and from the other text (LXXI), which forbids the supersession of a virtuous wife who has borne a son, that a second marriage should not be contracted without some fault on the part of the first wife. But

marriages with women of the four classes may be contracted by an amorous man, with the consent of his first wife any-how obtained.

VIJNYÁNÉSWARA, quoting the following text, with this remark, 'YÁJNYAWALCYA denounces *punishment* against one who supercedes *his wife* without just cause for supercession,' adds, 'he who forsakes, that is, supercedes such a wife, shall be compelled by the king to pay the third part of his property.'

LXXII.

YÁJNYAWALCYA :—He who forsakes a wife, though obedient to his commands, diligent in household management, mother of an excellent son, and speaking kindly, shall be compelled to pay the third part of *his wealth*; or, if poor, to provide a maintenance for that wife.

But the author of the *Dípacalicā* has not explained this desertion as consisting in supercession.

LXXIII.

MENU :—But she who, though afflicted with illness, is beloved and virtuous, must never be disgraced, though she may be superceded by another wife with her own consent.

With the assent of her again, who, though afflicted with disease, is obedient to her husband, and virtuous, another marriage may be contracted; but she must never be disgraced.

CULLÚCABHATTA.
"Afflicted with illness" is not to be taken in a large sense, comprehending accidental barrenness and the like; for progeny is declared necessary. This is remarked by other *lawyers*.

LXXIV.

LXXIV.

YĀJNYAWALKYA :—But a superseded wife must be maintained ; else a great offence is committed.

Though superseded by another wife, she must be treated with courtesy, and receive gifts and respect as before ; else, (that is, if she be not maintained,) a heinous sin is committed, and a fine is incurred, as will be mentioned. VIJNYĀNĒSWARA.

But no reverence, say others, is due to a degraded woman.

“ A fine, as will be mentioned ;” alluding to the forfeiture of a third part of his property (LXXII). It should be here noticed, that a woman addicted to inebriating liquors (LXVIII) comprehends, in a general sense, any woman liable to abandonment, as declared by other Sages.

LXXV.

MENU :—If a wife, legally superseded, shall depart in wrath from the house, she must either instantly be confined, or abandoned in the presence of the whole family.

That wife again, who, being superseded, departs in wrath from the house, should be instantly chastised with a rope or the like, and compelled to stay ; or, if her resentment cannot be repressed, she must be abandoned in the presence of her father and the rest of her family. CULLÚCABHATTA.

This abandoning of her in the presence of her family is a repudiation proclaimed to all, in this form, “ she is now rejected by me ;” and afterwards, offences committed by that woman do not affect the man.

LXXVI.

VĀŚISHT'HA :—From connubial intercourse, from pilgrimage, from what pertains to acts of religion, these

these four should be rejected, *namely*, one who yields herself to her husband's pupil, or to his spiritual parent;

2. And especially one who attempts the life of her lord, or who converses with the vilest of men.

“Vile ;” despicable, as a *Chândāla* or the like.

The *Retnâcara*.

“Vile ;” abject, begotten in the inverse order of the classes.

The *Dîpacalicâ*.

Others add, that “rejection” means exclusion from connubial intercourse and the rest.

LXXVII.

YÁJNYAWALCYA :—From disloyalty in thought a woman is purified by her courses ; but, in case of conception by unlawful commerce, desertion is enjoined by the law ; and so in the case of her destroying an embryo, or slaying her husband, or committing any sin in the first degree.

Since a text of MENU expresses, that a woman, whose thoughts have been unchaste, is purified by her monthly discharge*, this purification by her courses concerns mental disloyalty : but if she have conceived by a man of low class, she must be forsaken ; of course expiation is suggested in case of disloyalty in mind or body, provided she do not conceive. If she destroy an embryo, slay her husband, or commit any sin in the first degree, she must be forsaken.

SÚLAPĀNI.

VIJNYĀNÉS'WARA concurs in that exposition ; but explains “in case of conception,” in case of pregnancy by commerce with a man of the servile class ; and quotes the following text of law :

LXXVIII.

* Chapter V, v. CVIII.

LXXVIII.

Wives of *Bráhmanas*, *Cshatriyas*, and *Vaisyas*, approached by a man of the servile class, are purified by penance, provided they bring forth no children by such commerce; and not otherwise.

LXXIX.

HÁRITA:—A man should avoid her who has destroyed an embryo, has criminally conversed with a man of low class, with a pupil, or with a son, is addicted to drinking or to brawls, or wastes property or stores of grain.

LXXX.

MENU:—That a woman who follows her own will should be forsaken, is ordained by the law; but let not a man slay his wife, nor mutilate her person:
2. VIVASWAT* declared, that a woman wilfully disloyal should be forsaken, not slain nor disfigured; a man should avoid the slaughter of women.

He declared, that she should not be slain, nor disfigured.

The *Retnácara*.

LXXXI.

NÁREDA:—If a woman be disloyal, ignominious, tonsured, the lowest bed, the meanest food, the worst habitation, and the task of removing filth, constitute her punishment.

LXXXII.

E E 4

* Title of SU'RYA.

LXXXII.

YAJNYAWALKYA :—Let a man keep a disloyal wife deprived of her rights, squalid, maintained on a ball of grain alone, subdued, and *only* suffered to repose on the meanest bed.

On this CHANDÉSWARA remarks, that ‘rejection and other penalties are denounced against disloyal wives, according as the offence is heinous or venial : the rule of decision must depend on the several distinctions of disloyalty.’ Meaning wilful and casual disloyalty, and other distinctions. But VIJNYÁNÉSWARA says, she who is disloyal should be kept by her husband in her own house, “deprived of her rights,” that is, divested of her right to maintenance, to jewels and the like ; “squalid,” or destitute of collyrium, perfumed unguents, apparel, and ornaments ; “subdued,” by restricting her food to the mere sustenance of life, and by other expedients ; and *only* suffered to repose on the meanest bed, or on the bare ground : *let him so treat her*, for the sake of inducing repentance, not for the sake of atonement ; since penance is separately mentioned.

MENU :—A wife, excessively corrupt, let her husband confine to one apartment, and compel her to perform the penance ordained for a man who has committed adultery*.

Sleeping on the bare ground and so forth is her punishment, according to other lawyers.

To prevent the repetition of disloyalty, let him confine her in her own apartment, allowing her a ball of rice *only* for her sustenance.

SÚLAPÁNI,

LXXXIII.

* The last hemistich only was inserted ; I cite the whole verse, as the quotation would not otherwise be intelligible. T.

LXXXIII.

VRĪHASPATI :—A wife who is disloyal, *though* maintained and guarded, let a man keep in his house, squalid in her person, suffered only to repose on the lowest bed, and maintained on a ball of grain alone :

2. But she who has *criminally* conversed with a man of low class, may legally be forsaken, or *even* put to death.

Some remark, that the prohibition of putting a wife to death (LXXX) does not extend to the case of adultery with a man of low class.

LXXXIV.

Smṛiti, quoted in the *Mitācshara* :—He who refuses to approach his wife, when she has bathed after her courses, doubtless sinks to the region of horror, where the slayers of priests are tortured.

LXXXV.

YĀJNYAWALCYA :—SOMA gave them fairness; a *Gand'harva* endowed them with a charming voice; and the regent of fire, with universal purity: hence women are truly pure.

Therefore, in respect of universal contact, embraces, and the like, women are considered as pure and undefiled.

VIJNYĀNÉSWARA.

A man, therefore, must necessarily approach an unoffending wife at the prescribed season, else he would be criminal, and his wife would not be guarded. All this must be maintained by the king.

CHAP.

CHAP. II.

ON THE

DUTIES OF A WIFE.

SECT. I.—*On the Conduct enjoined to Women whose Protectors are present.*

LXXXVI.

MENU :—By a girl, or by a young woman, or by a woman advanced in years, nothing must be done, even in her own dwelling-place, according to her mere pleasure :

2. In childhood must a female be dependent on her father ; in youth, on her husband ; her lord being dead, on her son ; *if she have no sons, on the near kinsmen of her husband ; if he left no kinsmen, on those of her father ; if she have no paternal kinsmen, on the sovereign* : a woman must never seek independence.

3. Never let her wish to separate herself from her father, her husband, or her sons ; for, by a separation from them, she exposes both families to contempt.

Thus, if she receive the caresses of any man but her husband, in consequence of her separation from these protectors, both families are dishonoured.

LXXXVII.

LXXXVII.

YÁJNYAWALCYA :—Careful of the domestick furniture, diligent in the management of the household affairs, cheerful, avoiding expence, let her shew reverence to her husband's parents, obsequiously honouring her lord.

Carefully repositing in their places the domestick furniture, or seats and utensils employed in the house ; as the pestle, mortar, and winnowing basket, and the like, in the place where grain is husked, and the grinding stone and pebble together in the place where things are ground, and so forth. The *Mitácshará*.

'SULAPÁNI also explains the same term 'repositing the household utensils.'

LXXXVIII.

Smṛiti, quoted in the *Retnácara* :—An affectionate well-wisher to her lord, strict in her conduct, keeping her senses in subjection, she acquires renown in this world, and, after her death, the highest abode.

Entertaining good wishes, founded on affection.—'SÚLAPÁNI.

"Affection;" exclusive mental regard, and wishing that which is best in a moment of distress. VIJNYÁNÉSWARA.

LXXXIX.

MENU :—She must always live with a cheerful temper, with good management in the affairs of the house, with great care of the household furniture, and with a frugal hand in all her expenses.

XC.

VRĪHASPATI:—Rising early, reverence to venerable persons, preparation of food and condiments, the lowest seat and bed: such is declared to be the proper conduct of women.

“Preparation of food and condiments;” the dressing of victuals and the like.

XCI.

DÉVALA:—Dependence, attendance on her husband, aid in his religious ceremonies, respectful behaviour to those who are entitled to veneration from him, hatred to those who bear enmity to him, no ill will towards him, constant complacency, attention to his business, are the duties of women.

“Aid in his religious ceremonies;” attendance on her lord when the sacrificial fire is supplied, when offerings are made; and so forth. Respectful behaviour to his father and others entitled to veneration and respect from him. “Hatred to those who bear enmity to him;” *for* no benefit should be conferred by a woman on those who injure her husband, even though they soothe her with praise. “No ill will towards him;” no thoughts injurious to her husband. “Attention to his business;” industry in business which concerns her husband.

XCII.

VISHNU, after premising “duties of women:”—Accompanying of her husband, reverence of his father, of spiritual parents, of deities and guests, great cleanliness in regard to the domestick furniture, and care of the household vessels; avoiding the

the use of philters and charms, attention to auspicious customs, austerities after the death of her husband, no frequenting of strange houses, no standing at the door or window, dependence in all affairs, subjection to her father, husband, and son, in childhood, youth, and age : *such are the duties of a woman.*

“ Accompanying of her husband ;” going wherever her husband goes, but to no place unauthorized by him : or it may be read, attending him at his religious ceremonies. “ Use of philters and charms ;” subduing by incantations and drugs. “ Standing at the door and window,” to gaze at her husband’s countenance : or “ not standing at the door and window,” lest her husband should entertain suspicions of her holding commerce with other men.

XCIII.

The *Mahábhárata* :—Should her husband discover a woman to be wholly addicted to charms and philters, let him shun her as he would a serpent which had crept into his house.

XCIV.

Speech of the goddesses of abundance to the goddesses of the earth, quoted in the *Retnacara** :—“ With women ever pure and adorned, faithful to their lords, speaking kindly, not lavish, blessed with progeny, careful of the household goods, attentive to religious worship ;

2. “ Whose houses are neat, whose senses are subdued, who avoid strife, who are not avaricious, who respect their duty, who are endued with tenderness,

* From VISHNU, if the citation in the *Vivádárvana* be correct.

derness, I am ever present, O thou supporter of worlds!"

"Attentive to religious worship;" attentive to the business of providing oblations for the worship of deities and for other sacraments. "Who avoid strife," or contention. "Who are not avaricious;" who are not covetous.

XCV.

SANCIHA and **LICHITA**:—For every succeeding day let the wife clean the vessels used at meals; let her sweep the dwelling-house and gate, and, when clean, preserve it so; let her provide curds, rice, *durva* grass, new leaves, and blossoms, for oblations; let her reverently salute her husband's parents, and afterwards perform the necessary business of the household: let her eat nothing before the gods and guests are satisfied, nor before her husband *has eaten*, except drugs *swallowed* medicinally.

"For every succeeding day;" for each coming day. The construction of the sentence is this: let her eat nothing, before her husband *has eaten*, except drugs *swallowed* medicinally; but as a remedy for any distemper, she may swallow drugs, even before her husband *has eaten*. The *Retnâcara*.

"Let her sweep the dwelling-house and gate;" let her clean the habitation. "And, when clean, preserve it so;" prevent the introduction of uncleanly things into a clean house: or let her sweep the court-yard and the like.

XCVI.

RIŠHYAŚRIŅGA:—Let her attend to the business of the

the house, and heed her ornaments; after the daily bath, let her adorn her locks with flowers and with drefs;

2. Privately let her retire early *from the couch of her lord*, that no other may perceive *her withdrawing*; let her pay adoration to the deities, and supply oblations with fragrant mixtures and blossoms.

“Attend to the business of the house;” be diligent in domestick affairs. “Heed her ornaments;” brighten them, by cleaning and the like. “After the daily bath adorn her locks;” embellish them braided after the daily bath. *The Retnâcara.*

“Supply oblations with fragrant mixtures and blossoms;” at twilight, let her prepare oblations at home with mixt perfumes, lamps, blossoms, and the like, in honour of the deities: thus some explain the phrase. “Privately let her retire;” at the close of night, let her withdraw from her husband before any other person wakes.

XCVII.

SANC’HA and LIC’HITA:—A woman must not go forth without vesture, nor move without her upper garment; nor use perfumes, garlands, jewels, or variegated apparel in seasons of mourning; nor converse with strangers, except traders, mendicants and aged men; nor expose her navel. Faithful to her family, she must wear covering from her ankles upwards; and never bare her breasts; nor laugh uncovered, in the presence of respectable men.

Discovering her face “in the presence of respectable men;” but covered, she may indulge herself in laughter.

The Retnâcara.

“Without vesture;” a woman must not go forth unclothed. Another reading has, “a woman must not go forth unbidden;” she

she must not go beyond the house or field without the assent of her lord. She must not move in a short shift, with her breast bare, and without her upper garment. "Variegated;" of diversified colours. She must wear clothes from her ankles to her navel, and not loosen the covering of her breast in the presence of any person.

XCVIII.

VYÁSA:—Sitting at the door, continually looking out from the windows, conversing with despicable persons, and laughing *unseasonably*, are faults which bring infamy on the women of a family.

"Conversing with despicable persons;" talking with them.

XCIX.

MENU:—Drinking *spirituous liquor*, associating with evil persons, absence from her husband, rambling abroad, unseasonable sleep, and dwelling in the house of another, are six faults which bring infamy on a *married* woman.

All these are stated as modes of conduct which bring infamy on women.

The *Retnácara*.

"Drinking;" quaffing spirituous liquors. "Associating with evil persons;" with disloyal women and the like. "Rambling abroad;" going to the houses of strangers, of her own accord, without a sufficient motive. Sleeping, or reposing, by day. Dwelling in the house of any stranger.

C.

VRĪHASPATI:—Drinking spirituous liquors, rambling abroad, sleeping by day, and neglect of *the household*

household business, are faults which bring infamy on a woman.

“Neglect of business” here signifies not performing the household business. *The Retnâcara.*

The meaning is, not attending to the care of household utensils and the like, and not sweeping the house and so forth.

CI.

SANC’HA and LIC’HITA:—Let not a woman associate with harlots, with women whose conduct is immoral, with fortune-tellers, with seducers and corrupters, nor with sinners: by their society she would be perverted. Let her not attempt any thing injurious to her husband; nor use vessels, or other utensils employed at meals, of such sorts as are forbidden; nor sleep supine; nor wear sandals.

“Harlots;” courtesans. “Fortune-tellers;” women who practise divination: they are mentioned, considering them as disposed to pervert others. “Seducers;” women who delude others: these are mentioned with some distinction supposed between them and the women whose conduct is immoral. “Corrupters;” women who attempt to pervert *their companions*: these are supposed different from the women already described. “Sinners;” degraded women and others who have been guilty of crimes. *The Retnâcara.*

Others explain “women whose conduct is immoral” to be such as are addicted to gaming and the like: they induce a disposition to evil in *other* women. “Seducers;” women practised in guile. “Corrupters;” women skilled in insidious discourse tending to lead the mind into various errors.

CII.

HARITA:—We will next propound the conduct en-
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joined to married women. The wife is the home: a man should not consider as his home a habitation ungraced by a wife; therefore is she another home. Thoroughly cleaning the house, let her remove impurities falling in a well-cleaned and dignified habitation, and lay up what is loose; let her shun discourse with other men *besides her husband*, and the company of a pretended mendicant; let her not frequent strange houses, plains or groves, or convents of mendicants; let her not loiter on the road to the *publick* well, nor walk by twilight; let her not think of using the bed, the seat, the clothes, or the jewels of others, without restoring them to a state of purity; nor eat in the same vessel *with another*, nor drink spirituous liquors, nor eat flesh-meat, nor orts, nor refuse, unless from her spiritual parents, her husband, or her son; let her be void of desire for other men *besides her husband*; let her shun vain expences, and avoid petulant contradiction, sloth, gloominess, emulation *of other families* and the like. Soiled with orts, she must not repair to the temples of the deities, or to the house of him to whom her affections are due; without counsel, or before she has supplied the *sacrificial* fire, she must not decorate her person, nor touch with unwashed hands the goblet, the sieve, or the vessels of the dairy: she must wash, and reposit in a secure place, the caldron, its lid, the ladle, and *other* utensils. On the morrow, again washing them, let her use them in the preparation of food: by her husband's directions she may touch the vessels employed for *the* milk, *whence oblations are supplied*: having washed,
wiped

wiped and placed the metallick vessels, having swept and wiped the house and so forth, let her perform the offices committed to her at the approach of the time for oblations to the assembled gods, bathing according to the motive for ablutions: clothing herself with two white garments, having washed her hands and feet, having spit and having sipped water, let her enter the temple and pay her^d adorations; and let her place fire in the kitchen, provide sacrificial fuel, *cuśa* grass, flowers, oblations, and vessels used in propitiatory rites, and anoint with clarified butter the food and the like *intended for use, in the same manner with that intended for offerings*; and let her perform any other daily business. When all this has been done, and the fire has been supplied in honour of deities, let her bring the oblations for the wives of gods. When the offerings to deities, and the hospitable attentions to guests, have been performed, according to the means of the householder, and after satisfying his pupils and friends and her husband himself, the wife, with his permission, may eat the residue in private: and having rinsed *her* mouth with water kept for her own use, and washed and cleaned the vessels employed, she must lay out *a part of* the residue in a spot situated within the close, and equally distant from the north and east regions, *saying*, “Salutation to RUDRA the lord of cattle!” this is a fixed rule. In the evening the same *offices* should be repeated, *which are directed for each successive morning*. As for what remains *to be done* after these offices, let her make a wall of ashes at the door, *saying*, “Saluta-

“Salutation to the adorable RUDRA marked with ashes! I make a fence of ashes;” and let her touch *therewith* her lord, her son and the rest, herself, and any thing which should be guarded. She must not enter her bed with unwashed feet, nor naked, nor soiled with orts, nor disrespectfully, nor without saluting her husband’s feet; nor rise exposed to view, nor later than the rising of the sun; nor without a vessel of water. She must regularly clean the house; she must be circumspect, careful for the best, serene, full of good wishes; she must speak affectionately to her husband; she must not sit while he stands; nor sit above him, nor in a questionable place; nor gaze at him continually: she must wash his feet, press his limbs with her hands, attend him with a fan when he feels heat, and wipe from his limbs perspiration excited by the sultriness of summer. She must relieve him, when his head shakes *through* pain, and meet him in the yard when he returns fatigued with a load from another town. Entertaining no evil thoughts, let her do him honour with rice, grass and water presented in an *argha*; and, under his directions, practise austerities, execute the business of the deities, and perform ablutions.

“A wife is another home;” even she is the home, since *marriage* constitutes the order of a householder. “Thoroughly cleaning the house;” accomplishing the defecation of it by thorough sweeping. The *Retnâcara*.

The sense is rendering the house neat, and sweeping it. “Lay up what is loose;” or hide what is unconcealed. “Shun discourse with other men;” if wishes may be thereby excited, avoid the sight of other men, and so forth: “and shun the company of a mendicant;”

mendicant ;" in the apprehension of his proving to be a pretended mendicant, refrain from associating even with a true one, lest her duty be infringed. "Let her not frequent the houses of others." "Groves;" this term is explained by AMERA, rows of any thing, and of trees especially: the sense is, 'regular woods.'

"Let her not loiter on the road to the well;" let her not stop on the road while going to the well. The *Retnâcara*.

On that road especially, by which all persons fetch water, no delays are justified. "Nor walk by twilight;" still less by night. Let not a well-disposed woman indulge herself in such gratifications, lest infamy attend her.

Without again cleaning and washing them, let her not use the bed, seat or clothes of others, &c; let her not employ them in any circumstance. The *Retnâcara*.

The last term, "jewels," being expressed in the plural number with the sense of "and the like," it is thereby intimated, that the acceptance of a litter and of other things, which have been used by strangers, is likewise improper.

"Eat in the same vessel;" take a repast with another.

The *Retnâcara*.

The meaning is, off the same vessel with another.

Let her shun spirituous liquors and flesh meat, and avoid the orts and rejected food of any other besides her husband, his father, and his son. Or the sense may be, that even she who does drink spirituous liquors should not drink them out of the same vessel with any other than the persons enumerated. "Spiritual parent" denotes her husband's father and the rest.

The *Retnâcara*.

"Desire;" eager wish. "Vain expenses;" useless expenditure of wealth.

The *Retnâcara*.

"Petulant contradiction;" the construction of the sentence is, avoid controversy with her husband and the rest. Some read *pretyudvahanam* instead of *pretyudvadanam*, and explain it, 'her own contracting of another marriage when her husband espouses another wife.'

"Emulation;" dress and speech unsuitable to her family, and the like.

The *Retnâcara*.

The sense is, "avoid sloth and the rest." "Gloominess;"

causeless sorrow. "Nor, defiled with orts, enter the apartment of him to whom her affections are due."

"Without counsel;" without *due* consideration.

The *Retnâcara*.

The meaning is, let her not dress without consideration.

"The goblet;" the cup or the like used in sacrifice. "The sieve" or searce.

The *Retnâcara*.

"Vessels of the dairy;" vessels containing milk. This has a large sense; she must not touch with unwashed hands, any other vessel dedicated to the service of the deities.

And, washing the caldron and other utensils for the preparation of food on the succeeding day, deposit them in a safe place.

The *Retnâcara*.

Meaning, that she must not neglect them after preparing food for that day. To wash them is absolutely requisite; let her not suffer any prepared grain or condiments to remain in the vessels. "On the morrow;" explained by AMERA, 'the day not yet arrived.'

The day for which the vessels were cleaned and laid by, before it arrived; when that day has arrived, again washing them, let her prepare food.

The *Retnâcara*.

"Use them in the preparation of food;" the meaning is, she must again clean the caldrons and other vessels used in cookery.

"By her husband's directions;" with her husband's assent.

The *Retnâcara*.

Some remark that the sense is, 'vessels used for the milk intended for the deities.' "Having washed, &c." the three participles are referred to the term "metallick vessels."

"According to the motive for ablution;" 'suggested by her husband,' should be supplied. Hence the sense is, at the approach of the time for oblations to the assembled gods, execute the offices committed to her, when her husband bids her perform ablutions.

The *Retnâcara*.

"According to the motive for ablutions;" on account of the mid-day bath. In fact the commission might be delivered by saying, "bathe:" the bath may therefore be directed by implication. Thus the meaning is, on learning from her husband that the time approaches for oblations to the assembled gods, let her speedily

speedily bathe. The same should be understood of other business*.

“ Having spit ;” having ejected the phlegm or the like which was in her mouth. The *Retnâcara*.

Immediately after placing fire in the kitchen or place of cookery, let her prepare food ; and afterward bring the flowers, and the like, which had been previously collected. “ Bring the oblations :” the term (*beli*) is explained by AMERA, implements or materials of worship. “ Anoint with clarified butter, &c. ; and perform any other daily business.” According to the *Retnâcara*, the meaning is, smear with clarified butter the food intended for use, as that is smeared which is intended for the deities. Some words are supplied in the *Retnâcara*, after this mode, ‘ observe her husband’s directions ;’ it is supposed that the wife is not the person who brings the oblations for the wives of gods, after supplying the fire ; for, were she the agent *in the sentence*, it would be useless to *add any term to complete it* : but her husband appears, from the purport of the text, to be the agent. Others, however, think there is no difficulty even without supplying *any supposed omission* ; and they thus explain the phrase : “ having anointed the food with clarified butter, she supplies her husband with fire in honour of the deities, and also brings to him the oblations intended for the wives of the gods.”

After satisfying the deities, the guests, the inmates of the house, the pupils and friends, having *also* satisfied her husband with food, she may, with his permission, eat the residue ; that is, what remains, when no other desires to eat more of the food. The *Retnâcara* explains the particle in a disjunctive sense, and gives this construction ; with her husband’s assent, she may eat the residue, or even *eat of* the food, though some persons remain to be fed. Consequently she should eat the residue when no one remains unfed ; for a text forbids others eating it : “ what remains *untouched* is the food of the married couple † ;” and if that cannot be, a part may be reserved. This opinion should be questioned, for the text only directs a repast on the residue. *However*, it should not be objected, that her feeding on the residue is positively

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* That is, she must perform the whole, on receiving directions for any one of connected offices.

† Similar to the texts of MENU, Chap. III. v. 116 and 117.

tively enjoined by the sense of the text, in as much as others are previously mentioned. Lawyers hold, that since other inmates of the house, not specified in this text, must have a repast, the sense obtained from the terms of the text is, that she must eat last.

“Water kept for her own use ;” water reserved for her own purposes. “Having rinsed ;” having sipped without swallowing. “Cleaned ;” removed foulness. The *Retnâcara*,

The removal of foulness signifies scouring of the caldron with a rag or the like: consequently the meaning is, that it should be cleansed with abundance of water.

“In the evening the same should be repeated ;” this is explained in the *Retnâcara*: at the time of evening twilight also, the same offices should be repeated which are directed from the words “on the morrow again washing them” to the word “oblations.” In the evening, or at night, she must again wash the caldron and so forth; for another repast at night is not forbidden to priests.

Two *daily* repasts are allowed by holy Sages to priests inhabiting *this* earth. *They may eat* by day, and again at night, after the first watch and a half, *but* before the second watch.

Priests should take their repast at a different time from the early hour forbidden by another text. Thus others expound the law.

“Make a wall of ashes at the door ;” this is intended for an *auspicious* guard of the household effects. He subjoins an *auspicious* preservative for her husband, her son, and herself; “let her touch, therewith, her lord and the rest ;” touch them with her hand soiled with ashes. “And any thing which should be guarded ;” touch that also with ashes. The *Retnâcara*,

The Sage declares the forms to be observed in reposing: not with unwashed feet, nor naked, nor soiled with orts, nor disrespectfully, nor arrogantly. The *Retnâcara*.

That is, humbly and respectfully. “Let her not rise later than the rising of the sun ;” let her rise before the appearance of the sun. “She must regularly clean the house ;” she must sweep the dwelling-house and the like, at the three *proper* hours. She must

must be skilled in good offices. She must use such expressions as may please her husband.

The *Cás'ic'handa* * :—If clarified butter, salt, or oil, be deficient, let not a faithful wife tell her husband “there is none,” but desire him to procure it.

Even in the case of deficiency, it should be said, “it is increased.”

RAGHUNANDANA.

This is directed, lest her husband be afflicted at hearing it abruptly said, “there is none.” She must not sit while her husband stands, nor on a seat above his, nor gaze even at him continually. She must wash his feet ; alleviate pain by the pressure of her hands ; and attend him with a fan during hot weather: she must wipe his limbs with a cloth or the like. “When his head shakes ;” when it is tremulous : seeing him return fatigued with an excessive load brought from another town, let her meet him in the court : and, with her husband’s assent, she must keep the fasts ordained on certain lunar days and the like, pay worship to the deities and so forth, and perform voluntary ablutions. From parity of reasoning, the same should be understood of duties towards her father and the rest. Such is the sense of the text (CII).

If she be unacquainted with the sense of this ordinance, let her learn it from her husband’s mother and the rest, or from her husband himself. If a woman, who, through insolence or the like, does not fulfil the intention of the ordinance, though able to perform her duties, be chastised by her husband with a small rope or shoot of a cane, without infringing the settled usage, no offence is in that case imputable to her husband. To intimate this, a text of moral and religious law has been placed in the *Retnâcara*, under a title of Judicial Procedure.

CIII.

MENU :—When the husband has performed the nuptial

* A portion of the *Scanda purâna*.

tial rites with texts of the *Véda*, he gives bliss continually to his wife here below, both in season and out of season ; and he will give her happiness in the next world.

2. Though unobservant of approved usages, or enamoured of another woman, or devoid of good qualities, yet a husband must constantly be revered as a god by a virtuous wife.
3. No sacrifice is allowed to women apart from their husbands, no religious rite, no fasting ; as far only as a wife honours her lord, so far she is exalted in heaven.
4. A faithful wife, who wishes to attain in heaven the mansion of her husband, must do nothing unkind to him, be he living or dead.

The text of law quoted in the *Retnâcara* (LXXXVIII) declares the highest reward of female virtue. Observing an excellent conduct ; behaving in the virtuous manner described by HÁRITA and others (CII) ; keeping her senses in subjection ; neither looking at, nor conversing with, any other man *but her husband* ; such a virtuous woman acquires renown in this world.

CIV.

MENU :—But she who is faithful to her lord, from the moment when she is given in marriage, through the whole period of her life, acquires the same abode with her husband, even as ARUND'HATÍ attained a heavenly mansion.

“ Who is faithful to her lord ;” even after her husband's death observing a virtuous conduct, and performing austerities and the like for his sake.

CV.

MENU :—While she who flights not her lord, but keeps her mind, speech, and body devoted to him, acquires high renown in this world, and, in the next, the same abode with her husband.

“ Who flights not her lord ;” who is not disloyal. “ The same abode with her husband ;” here is supposed *heaven* obtained by sacrifices and the like performed in concert with her lord.

CHANDÉSWARA.

But disloyal women do not acquire the same abode, even by sacrifices performed in concert with their lords.

The *Herivans'a* :—Fruitless indeed are the religious rites of immoral females, O lovely woman !

CVI.

CÁTYÁYANA, quoted in the *Ch'handóga peris'ishta* :—Solely by obedience to her lord does a woman attain all the *heavenly* abodes : returning from heaven, she shall become the source of pleasures here below.

Some remark, that the particle excludes a reference to sacrifice : thus, even without sacraments or the like, but through unerring fidelity to her lord, every fruit of *good actions* is obtained even by a simple wish. Others say, without obedience to her husband those abodes are not attained : this, which had been already mentioned, is also declared by **CÁTYÁYANA** (CVI).

CVII.

VRIHASPATI :—The virtuous woman, who, indispensed when her husband is sick, pleased when he is

is cheerful, squalid and pining when he is absent, dies when he deceases, must be considered as *truly* faithful to her lord*.

CVIII.

VASÍSHT'HA:—The abode of faithful wives, who are fond of home and truly rigid, and who have subdued their passions, shall be the same with that of their lords; but the mansions of shakals are assigned to disloyal wives.

“The same with that of their lords;” they shall dwell together with their lords in heaven. Even though the husband have committed sins, they are atoned by her merit.

CIX.

MENU:—But a wife, by disloyalty to her husband, shall incur disgrace in this life, and be born *in the next* from the womb of a shakal, or be tormented with horrible diseases, which punish crimes.

Consequently, on the subject of disloyalty, MENU and VASÍSHT'HA concur.

CX.

CĀTYÁYANA, in the *Ch'handóga peris'ishta*:—To what hell goes not a woman who neglects her lord through delusion of mind? With difficulty *again* attaining human life, what pain suffers she not?

CXI.

SANC'HA and LIC'HITA:—While nourishing her infant

* Cited in Book V, as a text of HA'RÍTA.

fant at her breast, let her avoid onions, flesh-meat, and other forbidden diet, *reflecting*, “my body is *the food of my infant* :” through that personality is a *Bráhma* mixed *with the maternal body* ; an embryo is indeed produced from what is eaten and drunk by his mother.

From the transmission of food eaten to the infant, he might be degraded ; therefore, it is an offence to eat onions and the like.

CXII.

MENU :—But she who, having been forbidden, ad-dicts herself to intoxicating liquor even at jubilees, or mixes in crouds at theatres, must be fined six *raśticás* of gold.

“ Even at jubilees ;” and “ having been forbidden :” the text supposes persons to whom the law *in general* permits the use of intoxicating liquor. VAŚISHT’HA, quoted in the *Retnácara*, propounds a law relative to those who are never permitted to drink spirituous liquor.

CXIII.

VAŚISHT’HA, quoted in the *Retnácara* : — That woman, of the priestly class, who shall drink intoxicating liquor in this world, the deities will not admit, *in the next*, to the same abode with her lord ; losing purity, she remains in this world, and is born a leech in water, or a sow.

Here “ a woman of the priestly class” is mentioned indefinitely : and, a fine having been denounced in the preceding text, against drinkers of intoxicating liquors, a fine should be also understood in this case ; and it must be proportioned to the offence.

CXIV.

YÁJNYAWALCYA:—A woman of the sacerdotal class who has drunk inebriating liquors, attains not the mansion of her lord; she is born again, in this world, a bitch, a female vulture, or a sow.

CXV.

YAMA:—That woman of the sacerdotal class who addicts herself to drinking spirituous liquor in this world, the deities admit not, *in the next*, to the same abode with her lord; she remains impure in this world, becoming a bitch, a female ass, or a sow.

SECT. II.—*On the Conduct of Women whose Husbands are absent.*

CXVI.

MENU:—While her husband, having settled her maintenance, resides abroad, let her continue firm in religious austerities; but if he leave her no support, let her subsist by *spinning and other blameless arts* *.

While he resides abroad, after settling the means of her support, let her subsist on that maintenance. CHANDÉSWARA.

“Firm in religious austerities;” abstemious in respect of food and the like: and this should be understood of both cases.

CXVII.

* This text has been already cited at V. xlv, s.

CXVII.

YÁJNYAWALCYA:—A woman whose husband resides abroad must avoid sports, personal decoration, crouds and jubilees, laughter, and visits to the houses of strangers.

“Sports ;” playing at ball and the like : this should be shunned.
 “Personal decoration ;” using the fruit of the *ámalaca* and the like : by such embellishments the desires of other men are *excited*. Although by prohibiting the resort of women, whose husbands are absent, to crouded shows and jubilees, it is permitted to those whose husbands are near ; yet it should only be practised with caution : and one whose husband is absent should at no time resort there, lest thoughts of men be excited, and infamy be the consequence of conducting herself by her own *mere* pleasure.

“Sports ;” play at ball or other external games. “Laughter ;” laughing in publick. SÚLAPÁNI.

CXVIII.

VRĪHASPATI:—A wife, in the absence of her lord, should not use dress, behold dances, hear songs, resort to crouded spectacles and jubilees, nor use flesh-meat and inebriating liquors.

CXIX.

VISHNU:—During the absence of her husband, a woman must not use dress, nor resort to the houses of strangers, nor stand at the door or window.

“Must not use dress ;” must not employ decoration.

CHANDÉSWARA.

The

The terms are explained by AMERA synonymously, ‘embellishment of dress.’

Decoration may signify decking the hair. Although a woman whose husband is near has already been forbidden to stand at the door or the like, she whose husband is absent is likewise forbidden, that she may not at any time stand there; or to show the greater heinousness of the offence.

CXX.

SANC’HA and LIC’HITA:—Amongst all his wives, let her of the priestly class guard her *own* conduct during the absence of the husband; let the father and mother guard the rest, or, after them, a wife of the military class. No dependent women of a family, whose husbands are absent, should use litters, behold dancers, gaze at exhilarating pictures, decorate their persons, resort to the garden, drink *spirituous liquors* openly, gratify themselves with *favoury drinks and food*, sport at ball, wear perfumes, garlands or jewels, rub their teeth *with colouring substances*, or *their eyelids with collyrium*, nor use mirrors, nor any embellishments of dress.

“Amongst all his wives;” among the several wives of one man, a *Brāhmanī* and others, she who is of the priestly class should guard her own conduct. The father and mother should watch the conduct of the rest; or, if they be not present, the wife of the military class should guard her own conduct and that of both the other wives. The *Retnācara*.

The remainder of the text is thus explained; all dependent women, whose husbands are absent, may not practise the several things enumerated, from the use of litters, to that of embellishments in dress. Whence is the suggestion of several wives of one man; for there is no objection to receive the text as a rule concerning women of the four classes, though severally married to different husbands? From the inferible sense of the expression,
“or,

“ or, after them, the wife of the military class,” which signifies, that, on failure of the father and mother, the wife of the military class shall guard the conduct of the rest, it is deduced, that the woman of the military class and those of the commercial and servile classes are wives of the same husband: and those three being found to be wives of the same man, it is consistent with the subject to suppose the *Bráhmaṇi* married to the same husband. What then is the rule concerning a woman of the military class married to a military man and so forth? By parity of reasoning, the *Cshatriyā* should guard her own conduct: but, if women of the commercial or servile class, married to a man of equal rank, cannot guard themselves, the father and mother should guard them; for it is directed that wives should be guarded by any practicable means.

Others say, the construction is this: “ amongst all the wives, let the *Bráhmaṇi* guard the conduct of others, and her own, (as is literally expressed;) after *her*, if she be incapable of that office, the father and mother; or, on failure of these, the wife of the military class.

“ Litter;” a small litter, or *dólā*. The *Retnācara*.

“ Dances;” exhibitions of dancing. “ Decorate their persons;” adorn themselves. “ Drink openly;” drink inebriating liquors or the like in a publick place. “ Gratify themselves with favoury drinks and food;” drink sweetened water, or eat confections or the like. “ Rub their teeth;” for cleanliness it may be done: but rubbing the teeth with tinging substances, for the purpose of embellishment, we think, is forbidden. The construction is this: the use of litters and the rest, by women whose husbands are absent, is not *permitted*.

CXXI.

HÁRÍTA :—In *the* absence of her husband, a woman should not adorn nor unbind her locks.

Some remark, that the prohibition of unbinding her locks does not prevent her bathing; but she should not expose her hair unbound. “ Adorn;” the construction of the sentence refers this

also to her locks of hair. CHANDÉSWARA observes, that the text, again forbidding women whose husbands are absent to do things already forbidden to women who have no husband, enforces the prohibition.

CXXII.

YAJNYAWALKYA:—She who is deprived of her husband should not reside apart from her father, mother, son, or brother, from her husband's father or mother, or from her own maternal uncles; else she becomes infamous.

She also, whose husband resides abroad, should, if possible, take the protection of these persons: if she be also deprived of her sons and the rest, she must not recur to her father's family while there are kinsmen of her lord; for this text is referible to women whose husbands have deceased. Yet it may be *also* admitted *under this head*; for she also whose husband resides abroad has no companion, and it is necessary that her conduct should be guarded. But the person who shall have authority over a widow, is appointed by the law. The person who shall have authority over the wife of a man residing abroad, should, in the first instance, be selected by her lord; on failure of that, he is appointed by the law. This distinction should be maintained.

CHAP. III.

ON

THE DUTIES

OF

A FAITHFUL WIDOW.

SECT. I.—On *Dying with or after her Husband.*

CXXIII.

ANGIRAS:—That woman who, on the death of her husband, ascends the *same* burning pile with him, is exalted to heaven, as equal in virtue to ARUNDHATÍ.

2. She who follows her husband *to another world*, shall dwell in a region of joy for so many years as there are hairs on the human body, or thirty-five millions.
3. As a serpent-catcher forcibly draws a snake from his hole, thus, drawing her lord *from a region of torment*, she enjoys delight together with him.
4. The woman who follows her husband *to the pile*, expiates the sins of three generations, on the paternal and maternal side, of that family to which she was given while a virgin.

5. There, having the best of husbands, *herself* best of women, enjoying the best delights, she partakes of bliss with her husband *in a celestial abode*, as long as fourteen INDRAS reign.
6. Even though the man had slain a priest, or returned evil for good, or killed an intimate friend, the woman expiates those crimes: this has been declared by ANGIRAS.
7. No other effectual duty is known for virtuous women, at any time after the death of their lords, except casting themselves into the same fire.
8. As long as a woman, *in her successive transmigrations*, shall decline burning herself, like a faithful wife, on the *same* fire with her deceased lord, so long shall she be not exempted from *springing again to life* in the body of some female animal.
9. When their lords have departed at the *fated* time of *attaining* heaven, no other way but entering the *same* fire is known for women whose virtuous conduct and whose thoughts have been devoted to their husbands, and who fear the dangers of separation.

“ Burning pile (CXXIII 1);” literally, seat of sacrifice: her husband’s burning pile. This is called *sabamarana*, or dying with *her husband*; for it coincides with the text “ let her ascend “ the burning pile, embracing *the corpse* of her husband already “ placed there.” This text, however, may be indifferently applied to *anumarana*, or dying after *her husband*. “ On the human body (CXXIII 2);” on the body of that woman, or on the human body in general. “ Follows;” goes *to another world* immediately after her husband; “ *to another world*” must be supplied: who goes thither, either by the forms of *sabamarana*, dying with, or *anumarana*, dying after, *her husband*. Nor does she alone enjoy heaven, she enjoys it with her husband (CXXIII 3). Nor

does she atone for herself and husband only, but for others also (CXXIII 4). "That family to which she was given while a "virgin;" that is, her husband's family.

It is said, she shall enjoy heaven. For what space of time shall she enjoy bliss? The Sage declares the period (CXXIII 5). "Having the best of husbands;" whose husband is absolutely best; an apposition, in which the middle term is rejected. Or the word "husband" itself implies the asseveration; consequently, as the divinity is venerated with the highest tokens of adoration, so is her husband remembered with veneration. Hence, herself superior to other women, delighting in the best path, or that which is declared by the *Vēda*, she partakes of bliss, &c.

If her husband had slain a *Brāhmaṇa*, how should she enjoy heaven with him without partaking of his sin? The Sage replies to that question (CXXIII 6). "This has been declared by ANGIRAS;" the text propounded belongs to ANGIRAS. Since the guilt of slaying a *Brāhmaṇa* is effaced, doubtless the guilt of killing a cow and the like is also atoned. Or the particles "or" are used in an affirmative sense.

Since cremation of her husband's body would be forbidden, had he, in his then existence, slain a priest; *the sense must be, that* one who had perpetrated that crime in a former existence, is delivered by his wife dying with him. RAGHUNANDANA.

Consequently the meaning is this: since the penalties for the murder of a *Brāhmaṇa*, perpetrated in a former existence, have been suffered, cremation of his present body is not forbidden.

VĀCHESPATI BHATTĀCHĀRYA.

According to this opinion, the cremation of a body slightly infected with leprosy is allowed. But, although the body of a sinner in the first degree, whose sin is unknown, and yet unatoned by suffering the penalty of it, is to the sight actually burned; yet the reward of dying with a husband is not in such a case attained. But others think, if the body of her husband, though a sinner in the first degree, but whose sin was unknown, be any-how burned, her reward is attained: for the literal sense of the ordinance, "casting herself into the flames after embracing the corpse of her husband," cannot be set aside; and a text declares pure, what is not known to be defiled, (MENU, Chap. V, v. 127). This question would require much discussion.

The Sage celebrates this act of dying with her husband (CXXIII 7). This is the best duty for virtuous women, averse from the enjoyment of other men and the like: *but*, of women who are not averse from intercourse with other men, the production of a son is the *principal* duty.

Others say, *the performance of* this duty confirms the attainment of rewards by those virtuous women who are described by VRĪHASPATI (CXVIII). Others again argue, from the text of the *Mahābhārata*, which only directs this expiation for women who have been averse from their husbands, that rewards are fully attained by others, namely by virtuous women, if, inasmuch as is possible, they deviate not from the path of conduct prescribed by HĀRĪTA and others (CVII).

CXXIV.

The *Mahābhārata* :—Those who have slighted their former lord through an evil disposition, or have remained at all times averse from their husbands, If they follow their lords at the *proper* time, in such a mode, are all purified from lust, wrath, fear, and avarice.

“ Whose virtuous conduct, &c.” (CXXIII 9) ; whose conduct and thoughts have been amiable, and devoted to their husbands, and who are fearful of the dangers or of the wound growing from separation. “ Their lords ;” their husbands. “ Heaven ;” a celestial mansion. The *Retnācarā*.

Others explain the terms ‘ who had husbands to whom their conduct and thoughts were devoted, or whose conduct and thoughts were devoted to their husbands.’

VYĀSA expressly propounds *anumarana*, or dying after her husband *on a subsequent day*.

CXXV.

VYĀSA :—Learn the power of that widow, who,
hearing

hearing that her husband has deceased, and been burned in another region, speedily casts herself into the fire :

2. Though he have sunk to a region of torment, be restrained in dreadful bonds, have reached the place of anguish, be seized by the imps of YAMA,
3. Be exhausted of strength, and afflicted and tortured for his crimes ; still, as a serpent-catcher unerringly drags a serpent from his hole,
4. So does she draw her husband *from hell*, and ascend to heaven by the power of devotion. There, with the best of husbands, lauded by the choirs of AP-SARAS.
5. She sports with her husband, as long as fourteen INDRAS reign.

In that text, to prevent her following him after a long space of time, it is said, “ speedily.” Her “ power ;” what she is able to accomplish : such is the power of a woman who has entered the fire, that she delivers her lord, even though he be tainted with sin.

A woman dying with her husband, embraces his corpse, and casts herself into the same fire : does this woman embrace the fire alone ?

CXXVI.

The *Brahme-purána* :—No other way is known for a virtuous woman, after the death of her husband ; the separate cremation of her husband would be lost, *to all religious intents*.

2. If her lord die in another country, let the faithful wife place his sandals on her breast, and, pure, enter the fire.

3. The faithful widow is pronounced no suicide by the

the *recited* text of the *R̥gveda* : when three days of mourning are passed, she obtains legal obsequies.

“ The separate cremation of her husband ;” the outward ceremony of burning his body. “ His sandals ;” mentioned indefinitely, intending only, says RAGHUNANDANA, something which had belonged to her husband. “ By the text of the *R̥gveda* ;” by the solemn text recited from the *R̥gveda* *. So the commentators : but others say, she is no suicide ; because *sahamarana* and *anumarana* are declared in the *R̥gveda* ; that is, she partakes not of the sinful taint arising from self-murder : as in slaying cattle which is authorized by the *Veda*, so in the act of suicide authorized by it there is no sin.

CXXVII.

Vṛihat Nāredīya purāna :—Mothers of infant children, pregnant women, they who have not menstruated, and they who are actually unclean, ascend not the funeral pile, O lovely princesses !

Some explain females who have not menstruated, young girls ; others expound the term, women whose pregnancy may be suspected ; and say, these are mentioned by the same rule by which one name of kine may signify cattle of that sort, and a similar term in the same sentence may denote cows only.

“ Princesses ;” addressing the mother of SAGARA.

RAGHUNANDANA.

CXXVIII.

Vṛihaspati :—The mother of an infant child may not relinquish the care of her infant to ascend *the pile* ; nor *may* a woman in her courses, nor one who *lately* brought forth a child, *burn herself with her*

* This, I suppose, alludes to the solemn text of the *R̥ich*, recited when a widow casts herself into the flames.

her husband; a pregnant widow must preserve the embryo.

But if the infant can be nurtured by any other person, in that case the mother is entitled *to follow her deceased husband*.

RAGHUNANDANA.

Thus the general prohibition concerning the mother of an infant, delivered in the text of the *Nāredīya-purāna*, is limited by the text of VRĪHASPATI. For instance, the mother of a very young infant, and a woman unclean after child-birth, may not ascend *the funeral pile*. The uncleanness after child-birth is declared, in the following text, to last twenty nights after bearing a son, and a month after bearing a daughter.

The husband may employ, in every sort of business, his wife who has borne a son, when she has bathed after twenty nights from the child-birth; and her who has borne a daughter, when she has bathed after a month.

But in all cases a woman of the servile class partakes of impurity for one month *only*, to avoid too great a disparity. In either case, if the daughter die within the month, impurity ceases at that very moment: but if a male child die within the period of impurity ordained for the several classes *by reason of the dead*, the uncleanness continues to the end of those periods.

MENU:—A man of the sacerdotal class becomes pure in ten days; of the warlike, in twelve; of the commercial, in fifteen*; of the servile, in a month.

Hence, after the period of uncleanness by reason of child-birth, if the infant were a little grown, and could be nurtured by another, a woman

* Translation of MENU, Chapter V, v. 83, where an error of the press has substituted five for fifteen.

a woman *then* widowed, may go with *her husband to another world*: and a woman of the servile class may ascend the pile within a month after child-birth, if her impurity had ceased *when her husband deceased*, in consequence of another cause of uncleanness intervening.

On full consideration of the whole text, it appears that all the wives of a *Brâhmana*, or other man, desiring particular benefits for themselves and their husband, are entitled to *die with or after him*, either in the forms of *sahamarana* or *anumarana*, unless they be pregnant, or mothers of infant children, or the like. In this opinion, delivered in the *Retnâcara*, RAGHUNANDANA does not concur; for a woman of the sacerdotal class is forbidden to ascend a separate pile, by the *following* text of GÓTAMA, cited in the *Mitâcsharâ* from the commentary on YÁJNYAWALCYA composed by DÉVABÓDHA.

CXXIX.

GÓTAMA:—A woman of the sacerdotal class cannot go *with her husband to another world*, ascending a separate pile.

A distinction is propounded in respect of a woman unclean by reason of her menstrual discharge.

CXXX.

The *Bhâwishya-purâna*:—If, indeed, *her husband die* after the third night of her uncleanness, the corpse, O twice-born men, should be kept one night, that she may follow him in death.

CXXXI.

VYÁSA:—If the faithful wife reside at a place which may be reached in one day, and notice be given *her of her husband's death*, the ceremony of burning

ing her lord should not be performed so long as
her arrival may be *expected*.

Thus, after the husband's death, notice should be sent, and the ceremony of burning her lord be performed on the next day when she can be no longer expected to come.

SECT. II.—*On the Duties of Widows choosing to survive their Husbands.*

CXXXII.

VRĪHASPATI:—A wife is considered as half the body of her husband, equally sharing the fruit of pure and impure acts: whether she ascend *the pile* after him, or survive for the benefit of her husband, she is a faithful wife*.

By this it is declared that faithful wives may live after the death of their husbands. The following text shows the conduct to be observed by them :

CXXXIII.

VISHNU :—After the death of her husband, a wife must practise austerities, or ascend *the pile* after him.

Even her practice of austerities is beneficial to her husband. The austerities are explained by RAGHUNANDANA : ' continence, and refraining from the leaf of betel and the like.'

CXXXIV.

* The first hemistich is again cited as part of another verse, Book V, v. 399 1.

CXXXIV.

PRACHÉTAS :—An anchorite, a student in theology, and a widow, must avoid the leaf of the betel, inunctions, and feeding from vessels of zinc.

Inunction (*abhyanjana*) in its accepted sense of rubbing with oil : that only is forbidden according to RAGHUNANDANA. It is mentioned in the *Ayur Vēda*, and called *abhyanga*.

The *Ayur Vēda* :—When oil is applied to the crown of the head, and reaches all the limbs, if both arms be sufficiently wetted with water, it is called *abhyanga*.

2. If the oil sparingly reach the limbs, and the arms be not sufficiently wetted, it is *māshti*, a distinct inunction (*abhyanga*) intended for the head (*māstaca*) and the rest of the limbs.

Since there is no proof of coincidence between civil law and the science of *prolonging* life, the word *abhyanjana* may be taken in its derivative sense of rubbing with oil ; and inunction in general is thus forbidden. Others again hold, that betel leaf is mentioned indefinitely ; for another ordinance prohibits fish and the like : they explain *abhyanjana*, embellishing the eyes with collyrium ; and take it in a large sense, comprehending the decoration of hair and the like.

CXXXV.

Smṛiti.—Only one meal each day should ever be made *by a widow*, not a second repast by any means ; and a widowed woman, sleeping on a bed, would cause her husband to fall *from a region of joy* :

2. She must not again use perfumed substances : but
daily

daily make offerings for her husband, with *cus'a* grass, *tila*, and water.

3. In the month of *Vaisāc'ha*, *Cārtica*, and *Māgha*, let her observe special fasts, perform ablutions, make gifts, travel to places of pilgrimage, and repeatedly utter the name of VISHNU.

She must make those offerings, if there be no son, grandson, or the like. So the *Pārijāta*; but, in fact, the offerings may be made although there be such persons.

CXXXVI.

The Matsya purāna declares veneration due to faithful women:—Therefore should faithful women be venerated like deities by all men; *for*, through their merits, the three worlds are governed by the king.

Through their merits the king governs and protects the three worlds. Another reading substitutes *yaśab'sriyam* for *jagat trayam*: "his renown is increased, and the king obtains prosperity." Veneration should be shown them by respectful speeches, and gifts of things desired and so forth.

These qualities of a faithful wife are cited by CHANDÉSWARA on the subject of the Widow's title to the heritage of a man who leaves no son.

CXXXVII.

HÁRITA *:—Leaving her husband's favourite abode, keeping her tongue, hands, feet, and *other* organs in subjection, strict in her conduct, *all* day mourning her husband, with harsh duties, devotion, and fasts

* I omit the text and commentary of another quotation from the same author, which is wholly unconnected with the present subject. T.

fasts to the end of her life, a widow victoriously gains her husband's abode, and repeatedly acquires the same mansion with her lord, as is thus declared: "That faithful woman who practises harsh duties after the death of her lord, cancels all her sins, and acquires the same mansion with her lord."

Is not a *celestial* abode unattainable by a woman who has no son, even though she rigidly avoid sensuality; for it is learned from a text of the *Vēda* quoted by VA'SISHT'HA, that "one who has no son attains not the celestial world;" and, in that text, there is no restriction of childless men? It is therefore best for a widow to obtain a son procreated according to the law of appointment for raising up offspring; and forbearance of sensuality is not infringed by coition for that purpose. VRĪHASPATI confutes this inference.

CXXXVIII.

VRĪHASPATI:—Strict in austerities and rigid devotion, firm in avoiding sensuality, and ever patient and liberal, a widow attains heaven, even though she have no son.

Such is the great efficacy of her austerities. MENU likewise forbids the acceptance of an appointment *to raise up male issue*, whether through an eager desire of bearing children, or for the sake of preserving her own life.

CXXXIX.

157 MENU:—Let her emaciate her body, by living voluntarily on pure flowers, roots, and fruit; but let her not, when her lord is deceased, even pronounce the name of another man.

2. Let her continue till death forgiving all injuries, performing

performing harsh duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue, which have been followed by such women as were devoted to one only husband.

Thus the desire of *intercourse* with another man, *after the death of her husband*, for the sake of preserving her own life, is obviated.

CXL.

MENU :—Many thousands of *Bráhmanas* having avoided sensuality from their early youth, and having left no issue in their families, have ascended, *nevertheless*, to heaven.

This is mentioned by way of illustration.

CXLI.

MENU :—And, like those abstemious men, a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity.

Consequently, a region of joy is attained, without leaving a son, by those who voluntarily practise austerities, and abstain from conjugal embraces ; but only if a son be born is it attained by those who remain in the order of a housekeeper. Hence it is said, “having avoided sensuality from their early youth ;” and, in the text which will be quoted from YAMA, “superior to sensual appetites.”

CXLII.

MENU :—But a widow who, from a wish to bear children, flights her *deceased* husband *by marrying again*,

again, brings disgrace on herself here below; and shall be excluded from the seat of her lord.

She does not attain the seat of her lord, for which purpose alone she wishes to bear children; therefore, she ought not to slight her *deceased* husband *by marrying again*.

CXLIII.

MENU :—Issue begotten on a woman by any other *than her husband*, is here declared to be no progeny of her's; no more than a child begotten on the wife of another man belongs to the begetter: nor is a second husband allowed, in any part of *this code*, to a virtuous woman.

A child begotten on the wife of another person belongs not to the man *who begot the child*: this also is mentioned by way of illustration.

CXLIV.

YAMA :—Let her continue, as long as she lives, performing austere duties, avoiding every sensual pleasure, and cheerfully practising those rules of virtue which have been followed by such women as were devoted to one *only husband*.

2. Neither in the *Vêdâ*, nor in the sacred code, is religious seclusion allowed to a woman; her own duties, practised with a husband of equal class, are indeed her religious rites: this is a settled rule.

3. Eighty-eight thousand holy Sages of the sacerdotal class, superior to sensual appetites, and having left no issue in their families, have ascended, *nevertheless*, to heaven.

4. Like

4. Like them, a *betrothed* damsel, become a widow, and devoting herself to pious austerity, shall attain heaven, though she have no son: this, MENU, sprung from the Self-existent, has declared.

“Women devoted to one only husband;” *literally*, wives of one only. Here damsel signifies a married or betrothed woman.
The *Retnâcara*.

CXLV.

CĀTYĀYANA:—Though her husband die guilty of many crimes, if she remain ever firm in virtuous conduct, obsequiously honouring her spiritual parents,

2. And devoting herself to pious austerity after the death of her husband, that faithful widow is exalted to heaven, as equal in virtue to ARUNDHATĪ.

The meaning is; let her not go even to a better husband, though she know that her lord died guilty of heinous crimes. The inference is this; since the text of MENU forbids the procreation of a son on the widow of a kinsman to gratify her wish to bear children, she must not have recourse to another man through a wish to leave issue; she may only receive the embraces of another, if she be duly authorized by her husband or other competent person. Accordingly it is familiarly known from the *Bhârata* and other works, that the wife of PĀNDU, by command of her husband, during his life-time, received the embraces of DHERMA, VĀYU and ‘SACRA*’. This subject should be examined by the wife.

Such are the duties of a woman whose husband is deceased.

* A title of INDRA.

CHAP. IV.

ON

INCONTINENCE.

SECT. I.—*On the Appointment of a Wife to raise up Offspring.*

CXLVI.

MENU, quoted in the *Retnácara*:—On failure of issue by the husband, *if he be of the servile class*, the desired offspring may be procreated, either by his brother or some other *sapinda*, on the wife who has been *duly* authorized*.

CXLVII.

Smṛiti †:—A wife duly authorized by her spiritual parents, through a wish that male issue should be obtained, may go to her husband's brother, and he may approach her until a son be produced:

2. But, when a son is begotten, he must refrain; otherwise duty is violated.
3. Sprinkled with clarified butter, or anointing his limbs

* See the gloss on this text, cited again V. CCXXIX, Book V.

† NAREDA. See Book V, in the gloss on V. CCXXXIII.

- limbs with expressed oil, averting his face from her's, and shunning the contact of limb with limb,
4. A younger *or an elder* brother, authorized by spiritual parents, may approach his brother's wife for the sake of offspring, that the family may be perpetuated, and not through amorous desire.
 5. If there be no spiritual parent living, he may be directed by the king, on the failure of the family; then, by his command, he may inform the woman and approach *her*,
 6. *Though considered as* his daughter-in-law, with purity, in the mode above mentioned, once in the season for procreating sons, and until she conceive: when pregnant, she is even *as* his daughter-in-law.
 7. Afterwards, if the man or woman conduct themselves otherwise, through carnal desire, they both shall be amerced by the king; else justice is violated.

"The wife who has been duly authorized (CXLVI);" by her spiritual parents, must be supplied. The construction of the other phrase is this: "the desired offspring may be procreated." "A wife duly authorized" (CXLVII); that is, for the necessary purposes of the appointment. "Duty is violated" (CXLVII 2); there is a failure in religious duty. "Younger brother" (CXLVII 4); mentioned generally, comprehending also an elder brother. "May be directed by the king" (CXLVII 5); hence it is to be understood, that the king is also qualified to make such an appointment. "Inform the woman;" teach her the *general* illegality of receiving the caresses of other men, and the *particular* legality of an appointment to raise up offspring. "His daughter-in-law;" his brother's wife, *considered as* similar to a daughter-in-law.

CXLVIII.

YAMA :—Silent, in a dark night, *let the appointed kinsman approach* his brother's wife, when she has bathed after her courses, careful that she perceive not the odour and contact of the hair of his head, beard, nails, and hair of his body ;

2. Dressed in a single garment, his limbs anointed with clarified butter, not perfumed, grave and sad, averting his face from her's, and shunning the contact of limb with limb,

3. He must endeavour to effect pregnancy ; but, when that is effected, he must refrain : let him not approach her, if she have issue, nor after a son has been begotten.

4. *The king* should cause the auspicious ceremony for a happy delivery, and all other solemn rites, to be performed by those who desire offspring for their brother, and obsequies for their ancestors.

“Dark ;” obscure : it is thus forbidden to make known his features. “Grave ;” not indulging amorous joy. “When a son has been begotten, *the husband's brother* must perform the auspicious ceremonies for a happy delivery ;” such is the construction of the sentence, and the causal has the original sense of the verb, as in the example RÁMA governed the realm. “By those *brothers* who desire offspring, &c. ;” that should be performed, may be supplied. Since the term, expressed in the plural number, suggests, that there is no restriction, it may be performed by any one of those brothers.

On this *text* CHANDÉSWARA remarks, that the king should cause the ceremonies for a happy delivery and the like to be performed, by the intervention of the brothers of the deceased, who desire offspring for their brother and obsequies for their ancestors ;

such

such is the sense ; and plurality is not here determinate ; the law subsists *in full force*, though one brother only be living.

CXLIX.

YÁJNYAWALCYA :—Sprinkled with clarified butter, let a brother of her husband, a kinsman who offers funeral cakes to the same ancestor, or one who is descended from the same original stock, being authorized by spiritual parents, through a wish that a son may be produced, approach a woman who has no son, at the proper season.

2. Let him approach her until she may possibly be pregnant ; but if he act otherwise, he shall be degraded *from his class*. A son begotten in this mode shall be a *Cshétraja*, or son begotten on the wife of a kinsman.

“Being authorized by spiritual parents:” this intends the assent of the deceased husband’s father or the like, expressed in this form, “beget a son on her ;” or thus, “let him beget a son on her.” But ‘SÚLAPÁNI’ thinks it implied, that the husband’s brother should likewise be authorized by his own spiritual parents, since it is directed that the woman also should be authorized by her spiritual parents. Others infer, from the words “through a wish that a son may be produced,” which they explain ‘a wish for a son who shall belong to himself,’ that a man desiring male issue for himself may approach a widow ; but as the text mentions “a woman who has no son,” *the child so begotten* is likewise *considered as* the offspring of her husband : accordingly it bears another import.

“He is legally heir to, and offers the funeral cake for, both *fathers*.”

But this only takes place when it has been agreed that he shall be *considered as* son of both.

That interpretation does not coincide with the opinion of 'SÚ-LAPÁNI; for he reads the last measure of the verse, "shall be son of the woman's husband*;" and the words "through a wish that a son may be produced," may be any-how explained in another sense.

CL.

MENU:—The first object of the appointment being obtained according to law, both *the brother and the widow* must live together like a father and a daughter by affinity.

After a son is begotten, they must behave as brother's wife and brother's father-in-law, and the like, not as husband and wife.

SECT. II. — *On the same; and on such Husbands as may be forsaken by their Wives without any consequent Penalty.*

CLI.

DÉVALA:—A husband may be forsaken by his wife, if he be an abandoned sinner, or an heretical mendicant, or impotent, or degraded, or afflicted with phthisis, or if he have been *long* absent in a foreign country.

"Abandoned sinner;" expelled, in the legal form, from virtuous intercourse. "A mendicant;" addicted to mendicity in a form unauthorized by the law. "Afflicted with phthisis;" suffering under the disease *called* phthisis. The *Retnúcara*

"If he be absent in a foreign country;" if he have gone to a foreign region.

CLII.

* *Cshétricasya bhavét sutah*, instead of *Cshétrajas tu bhavét sutah*.

CLII.

DÉVALA :—Whether *such* a husband be alive or dead, his wife may take another lord, for the sake of obtaining progeny, not through female independence.

By this, an appointment, in the form above mentioned, is authorized.

CLIII.

DÉVALA :—Eight years let a woman of the sacerdotal class wait for her absent lord ; or four years, if she have borne no children : after these periods she may unite herself to another man :

2. Let a woman of the military class wait six years ; or three years, if she have borne no children : and a woman of the commercial class, if she be a mother, *must wait* four years ; but two only, if she be childless :
3. For women of the servile class no period is ordained, nor do they violate *their* duty by an *early second marriage* ; but, for those especially who have borne no children, the settled rule prescribes one year.
4. These periods are declared for the wives of absent men, if there be no intelligence *concerning them* ; but if it be heard that the husband is living, these periods must be doubled.
5. If they have children, this conduct is enjoined to women by the lord of created beings ; hence, if such women marry another *husband*, it is no offence.

“ Let a woman of the military class wait six *years* ;” if she have borne children ; it must be so understood. The *Retnācara*. On this subject MENU also has said something :

CLIV.

MENU :—If he live abroad on account of some sacred duty, let her wait for him eight years ; if on account of knowledge or fame, six ; if on account of pleasure, three : *after these terms have expired, she must follow him.*

A husband absent on account of some sacred duty, such as executing the command of his spiritual preceptor, or the like, must be expected by his wife during eight years ; after that term has expired, his wife must follow him ; as directed by VASISHT'HA.

CLV.

VASISHT'HA :—The wife of a husband who lives abroad, must wait for him eight years ; after *that period* she must follow him, *giving notice thereof to five persons.*

“ If on account of knowledge,” six years must be expected ; if he live abroad “ on account of fame ” to be acquired by the display of his own knowledge, *he must also be expected* six years ; but if he go abroad to enjoy another wife, three years.

CULLUCABHATTA.

Thus, according to his opinion, commerce with another man, at the expiration of eight years, is not authorized by law. The text of VASISHT'HA must be supplied, “ after *eight years* ; and, *giving notice to five persons.* ” But another reading, has “ eight,” *instead of five* ; and the sense is *thus* obvious : “ after *eight years.* ”

But other lawyers remark, that long absence is considered by Sages as equivalent to *natural* death ; for, in the text of DÉVALA, it is said, “ if it be heard that the husband is living, the periods

are

are doubled." Consequently, if it be not heard that the husband is living, the appointment should be made at the end of eight years, and so forth, *according to the difference of class*. May it not be said, that the text does not relate to appointments *for raising offspring*; for, were it so, the period directed for those who have borne children would be unmeaning: and should it not therefore be affirmed, that this is a period of probation before women can forsake their husbands for a second marriage? On this point *the same lawyers* propose a solution of the difficulty: although they have several children, the text (CLIII 5) allows the appointment of women to take place at the end of eight years; or, if a woman who has born a son, by whom deliverance from the hell called *put* is effected, though he have died, desire male issue for the sake of the *benefit arising from other duties to be performed* by a son, she must be patient for a long space of time. Common sense obviates any *supposed* offence, if, unable to bear separation from her husband, she join him within the eight years; and it also obviates any *supposed* offence, if she do not follow him at the expiration of the eighth year. Thus the text is vindicated from its alleged futility.

"If there be no intelligence" (CLIII 4): the term is explained by AMERA, tidings or news. A woman of the sacerdotal class must wait for her husband eight years, if he reside abroad on account of some sacred duty; in other cases, she must wait six years or the like, for the text has the same import with that of MENU (CLIV): and for women of the military and other classes the periods are, *successively, in the order of the classes*, shorter by a quarter *than the periods prescribed to women of the priestly class*. Nor should it be argued that the text of MENU concerns a woman of the military class who has borne children: there is no ground for quitting the sacerdotal class first mentioned.

CLVI.

MENU:—By men of twice-born classes * no widow, or *childless wife*, must be authorized to conceive by any

* The text is here read, "by her own kinsmen." The other reading seems more authentick. T.

any other *than her lord*; for they who authorize her to conceive by any other, violate the primeval law.

2. Such a commission, *to a brother or other near kinsman*, is no where mentioned in the nuptial texts of the *Véda*; nor is the marriage of a widow even named in the laws concerning marriage.
3. This practice, fit only for cattle, is reprehended by learned *Bráhmanas*; yet it is declared to have been the practice, even of men, while *VÉNA* had sovereign power.
4. He possessing the whole earth, and *thence only called* the chief of sage monarchs, gave rise to a confusion of classes when his intellect became weak through lust.
5. Since his time the virtuous disapprove of that man who, through delusion of mind, directs a widow *to receive the caresses of another* for the sake of progeny.

“By any other” (CLVI 1); by any other than her husband's brother or kinsman offering funeral cakes to the same ancestor: and this supposes a case where one or the other exists; for *YÁJ- NYAWALCYA* also admits any man sprung from the same original stock, on failure of them. The *Retnácara*.

Thus, in the case of an appointment *to raise up offspring*, a rule is propounded in this text for appointing a husband's brother or other kinsman. If the connexion of a widow with another man were indicated by the tenor of holy texts, or by the letter of the law, would it not then only be permissible? The Sage replies to that argument (CLVI 3): thus, since there is no holy text for such a commission to another man, it is not suggested by the tenor of such texts; and since that commission is no-where mentioned in nuptial prayers, it is not suggested by the tenor of such prayers: and it should be understood, that there is no law in any such form, which could authorize a man to marry a widow, if

if he cannot obtain a damsel. Hence, before the reign of VÉNA, it was reprehended by learned men conversant in the *Védas*; but while VÉNA reigned, that practice was introduced by his independent authority, slighting revealed law; since that time, some few persons follow this practice, through delusion of mind; but it is reprehended by the learned. This practice therefore, although it have been actually followed by some who were not true *Bráhmaṇas*, should not be admitted, because it has no foundation in law, and was only introduced by the sinful VÉNA. Thus some expound the texts.

But CULLÚCABHATTA, on the authority of the texts which will be cited from VRĪHASPATI (CLVII), expounds them *otherwise*: before the reign of VÉNA, appointments to raise up offspring were authorized; but VÉNA having exhibited a bad practice founded thereon, such a commission even to a brother or near kinsman has been prohibited since his time.

Others again hold, that a woman should not be authorized to conceive by any other than her lord, neither by his brother or near kinsman, nor by any other person; for such a commission is not suggested by the tenor of holy texts, nor by the letter of the law. MENU considers such an appointment as a virtual marriage: and the practice, which was introduced in the reign of VÉNA, of any person at random begetting issue on a widow, is reprehensible.

Since MENU has authorized such a commission (CXLVI), is not the present text (CLVI) inconsistent with the preceding one? VRĪHASPATI explains the rule according to the difference of the four ages:

CLVII.

VRĪHASPATI:—Appointments of kinsmen to beget children on widows, or married women, when the husbands are deceased or impotent, are mentioned by MENU, but forbidden by himself with a view to the order of the *four* ages: no such act can be legally done *in this age* by any other than the husband.

2. In

2. In the first and second ages men were endued with true piety and sound knowledge ; so *they were* in the third age ; but in the fourth, their *moral and* intellectual powers are diminished :
3. Thus were sons of many different sorts made by ancient Sages, but such cannot now be adopted by men destitute of those eminent powers.

Consequently, such appointments were permitted in the ages preceding the fourth, but forbidden in the presentage : and VÉNA reigned in this period. Such is CULLÚCABHATTA's notion.

The texts of DÉVALA (CLIII) also may be argued to concern other ages, as well as the commission to the husband's brother.

The *Retnâcara*.

Such texts of DÉVALA, therefore, regulate the marriages of women of the sacerdotal and other classes to a second husband ; and the text of VASÍSHT'HA directs a wife to follow her husband after five years. In that case, if she go and return without obtaining any intelligence concerning him, she may take another husband at the expiration of the eighth year. Such is the opinion of the authors of the *Retnâcara*. But some lawyers remark, that the text of DÉVALA does not obviate the sinfulness of such conduct, but prevents a fine to the king. Thus may the law be concisely stated.

SECT. III.—On Second Marriages, or on Women previously enjoyed by another.

CLVIII.

NÁREDA :—Others are women who had a different husband before (*parapúrvá*) ; they are declared to be of seven kinds, in order as enumerated:
among

among these, the twice-married woman is of three descriptions; and the disloyal wife, of four sorts:

2. A damsel, not deflowered, but blemished by a *previous* marriage, is the first twice-married woman (*punerbhú*), named from the repetition of nuptial rites;
3. She who is given in marriage by her parents, *duly* considering the laws of districts *and families*, but through love accedes to another man, is declared to be the second twice-married woman.
4. She who is given by her spiritual parents to a *śāpinda* of equal class, on failure of brothers-in-law, is considered as the third;
5. Whether she have borne children or be childless, a woman who, during her husband's life, unites herself to another man from carnal desire, is the first disloyal wife (*śwairinī*);
6. She who deserts an infant husband, and has recourse to another man, but returns to the house of her lord, is considered as the second;
7. But she who, after the death of her husband, leaves his brother or other kinsman, *whose protection* she received, and suffers the caresses of a stranger through carnal desire, is considered as the third;
8. And she who, having had her protector assigned to her, nevertheless gives herself to another man, saying, "I am thine," being purchased with money, or oppressed with hunger or thirst, is considered as the fourth:
9. This rule is propounded in regard to women twice married, and those who are unchaste; the first respectively are *more* despicable *than those subsequently*

ly mentioned; and the last in gradation are preferable to *those* who precede them.

The particle “and” is here disjunctive. “Women twice married and unchaste” are expressed in the sixth case with the sense of the seventh. (*The rule concerning them, &c.*)

The *Retnâcara*.

CLIX.

SANC’HA and LIC’HITA, after premising three women twice married, and four unchaste, add:—Among these the first are respectively more despicable *than those subsequently mentioned*; the alternate cases, in which their children take the heritage or offer the funeral cake and water, are settled according to the qualities of the mother.

Among these, the first twice-married woman is twice actually espoused with nuptial rites; the second is only once *actually espoused*; the third is given in marriage by her kinsmen: such is the distinction. But the subsequent text (CLX) does not imply, that nuptial rites are twice celebrated, but that they are celebrated with a second husband. Thus, according to some lawyers, the whole is well explained. Others hold this distinction: the first chooses a second husband for herself; the second is given away by her parents; the third is given by her parents to a man proper for the commission, either her husband’s brother, or, on failure of him, a *sapinda*. The real distinction consists in this: she who is again espoused with solemn rites, is a twice-married woman, or *punerbhû*; she who receives the embraces of another man without a formal marriage, is an unchaste woman, or *swairini* *.

“The qualities of the mother (CLIX);” the son of a twice-married woman, whose conduct is in other respects strictly moral, is entitled to the heritage of his natural father; but not the son of *such* a woman, whose conduct is immoral.

CLX.

* See an ampler gloss on these texts in Book I, after V. ccxx.

CLX.

YÁJNYAWALCYA :—Whether a virgin or deflowered, she who is again espoused with solemn rites is a twice-married woman ; but she who slights her lord, and, through carnal desire, receives the embraces of a man equal in class, is an unchaste woman.

“ Slights her lord ;” does not respect him, nor preserve his bed *unfollied*. “ A man equal in class ” is mentioned generally, comprehending men of different class ; else adultery with a man of a different class would be a case omitted. Hence also the lower class of the husband neglected does not constitute the *parapúrvā* in the text of MENU (CLXI), but the acceptance of another husband.

CHANDÉSWARA.

CLXI.

MENU :—She who neglects her former (*púrvā*) lord, though of a lower class, and takes another (*para*) of a higher, becomes despicable in this world, and is called *parapúrvā*, or *one who had a different husband before*.

CLXII.

HÁRITA :—An unchaste, and a twice-married woman, the mother of a son born in adultery while the husband is alive, a lascivious woman, and one who eats all sorts of food, *whether lawful or forbidden* ; should all five be considered as mothers of *Súdras* :

2. The children who are any-how born of those women, should not be admitted to social meetings ; they are considered as unfit for society.

The

The term *rētōdhāh* (subdued by sensual appetites) signifies the mother of a *cunda*, or son born in adultery while her husband is alive. "A lascivious or lecherous woman" is one whose inordinate lust conducts her to one man immediately after repeated converse with another. The *Retnācara*.

"*Cunda*" is explained by AMERA, an adulterine begotten during the husband's lifetime; and *gōlaca*, an adulterine begotten after his death. The apposition of terms gives the sense "mothers of "*Sūdras*." "Any-how;" whether born during the period of the *mother's* intercourse with her husband, or during that of her intercourse with a stranger.

CLXIII.

CĀTYĀYANA: — That woman who generates a son through her inclination for sensual pleasures, and not through a wish that her husband may have male issue, is declared despicable and sinful.

2. If a woman, deserting her husband's race, receive the careffes of another man, she is considered as despicable in this world, and is called *parapūrvā*, or *one who had a different husband before* :
3. He to whom such a woman unites herself, shall not be deemed her lord: this law *prevails* unless she be purchased or obtained from her husband.
4. One who had a different husband before, should be confined and chastised for her offence; but he who chastises a woman *unable to avoid the offence*, or not aware of it, shall be liable to a fine.
5. If a woman be secured from the hands of robbers, from a rapid river, from famine, from danger in a national calamity, or from a wilderness, or if she be forsaken *by her husband*, or purchased *from him*,
6. There is no offence in the enjoyment of her; this

is

is a certain law: a man may accept a woman given by her lord, if he *freely* bestow her; and not otherwise.

CLXIV.

CĀTYĀYANA:—A woman may neither be given nor accepted against her own consent: this is a settled rule of law.

2. A man must not, in consequence of such a purchase, cohabit with a woman who is of a higher class *than his own*, who is reluctantly *sold*, or who has borne a son.

“Her husband’s race” (CLXIII); a man sprung from the same primitive stock: by this it is intimated that she receives the caresses of another man, without a commission to raise up offspring. He to whom a woman unites herself, though she had a different husband before, is not *deemed* her lord: in the text, one inflection is used for another. The meaning is, that her first husband, to whom her hand was joined, is her lord. The Sage subjoins an exception, “unless she be purchased, &c.” or unless she be obtained from her husband: this will be explained further on. “For her offence” (CLXIII 4); for the offence she has committed. The Sage describes a woman obtained *from her husband* (CLXIII 5). “Rescued from the hands of robbers, &c.” the construction of the sentence is this, obtained by rescuing her from the hands of robbers and the rest.

“Or if she be forsaken by her husband, or purchased from him;” if she be bought. In this case there is no offence; that is, no punishable offence. The *Retnācara*.

Consequently, there is offence in the enjoyment of other women than those mentioned, even with their own consent, if without the assent of their lords. In saying, that is not a punishable offence, the meaning is, that it is *nevertheless* a sinful act. If her husband give her away, then a man may accept a woman so bestowed by him, but not one who is not given by her husband. But even the husband should not give away his wife without her

own consent ; and a man should not accept a wife given by a foolish husband, in breach of that *rule* ; therefore, both shall be fined if they violate the law *by such a gift and acceptance*. This gift also comprehends sale ; for another text of CĀTYĀYANA, delivered under the title of Subtraction of what has been given (Book II, Chap. IV, v. VII 1), forbids the gift or sale of a wife without her consent. Barter also is a virtual sale.

It should be here noticed, that, even by those who contend for the validity of a gift, when a wife is given or aliened without her consent, a fine should be imposed, under the authority of the law, on him who accepts one given without her own consent : but a woman of higher class should not be taken even with her own consent. This the Sage intimates in the last text (CLXIV 2).

It must be here observed, that the three descriptions of twice-married women, above mentioned, ought not to be espoused ; for a text, cited in the *Udvāha tatva*, expresses,

CLXV.

1. Daughters of the seven twice-married women must be shunned as girls of the lowest birth ; and she who has been verbally or mentally betrothed, on whose arm a bracelet has been auspiciously tied,
2. Who has been given away after touching water, whose hand has been taken by a bridegroom, or who has been approached with nuptial fire, and the twice-married woman who has borne children.

“ On whose arm a bracelet has been tied ; and she who has been given away after touching water : ” the terms are so explained in the *Retnācara* and other works.

RAGHUNANDANA.

Is not she who is first betrothed to one, and afterward solemnly espoused by another, a twice-married woman, and may not a man legally marry her who has been given to one *only* ? No ; the precept, “ espouse not a twice-married woman,” is similar to the phrase, “ he accomplishes an act : ” now that act is accomplished,

plished, of which the action is complete ; and a woman becomes twice-married by the *second* solemn espousal.

CLXVI.

MENU:—The king himself shall take a fine of ninety-six *panas* from him who gives a blemished girl in marriage for a reward, without avowing her blemish.

On this CULLÚCABHATTA observes, ‘the king, for his own sake, should impose a fine of ninety-six *panas* on him who gives to a bridegroom a blemished girl, without disclosing her blemish, such as one insane or the like.’ Here, a previous marriage must be understood as included under the term “and the like.”

CLXVII.

MENU:—But the man who, through malignity, says of a damsel that she is no virgin, shall be fined a hundred *panas* if he cannot prove her defilement.

The man who through malignity says, “she is no virgin ; she has been deflowered ;” shall be fined by the king a hundred *panas*, if he cannot prove the fault alleged against her.

CULLÚCABHATTA.

Thus the preceding text may allude to this blemish. How is it an imputation on a damsel to say of her, that she is no virgin ? The Sage, therefore, proceeds as follows :

CLXVIII.

MENU:—The holy nuptial texts are applied solely to virgins, and no-where on earth to girls who have lost their virginity ; since those women are *in general* excluded from legal ceremonies.

“Virgins,” or girls not deflowered, nor given in marriage to another. Holy nuptial texts may not be legal; still a marriage may take place: what then is the objection? The Sage proceeds thus:

CLXIX.

MENU:—The nuptial texts are a certain rule in regard to wedlock; and the bridal contract is known by the learned to be complete *and irrevocable* on the seventh step of the married pair, hand in hand, after those texts have been pronounced*.

Therefore marriage is not valid without all the ceremonies, from the junction of hands, to the seventh step of the married pair.

“The bridal contract;” the perfect bridal contract.

RAGHUNANDANA.

The text of YÁJNYAWALCYA (CLXXXIII), explained in the *Dīpālicā* as denouncing the highest amercement against one who gives a faulty damsel in marriage without disclosing her blemish, must be understood as relating to excessive blemishes; in allusion to this, CULLUCABHATTA, in his gloss on the text of MENU (CLXVI), states “one insane or the like.” Some think loss of virginity to be the defect alluded to by YÁJNYAWALCYA: this opinion may admit of discussion, for MENU notices the blemish of lost virginity immediately after the text in question. Thence, excessive blemish may be explained, defect in the sexual organ or the like. Should her husband die after the damsel has been affianced, cannot legal issue be produced by any means whatsoever? It cannot in the fourth age. But the Sage states this subject otherwise:

CLXX.

MENU:—The damsel, *indeed*, whose husband shall die after troth verbally plighted, *but before consummation*,

* It is a part of the marriage ceremony for the bride and bridegroom to walk seven steps, hand in hand, during the recital of certain prayers. T.

summation, his brother shall take in marriage, according to this rule :

2. Having espoused her in due form of law, she being clad in a white robe, and pure in her moral conduct, let him approach her once in each proper season, and until issue *be had*.

“ According to this rule ;” according to the rule which will be mentioned. On failure of brothers, a kinsman shall take her in marriage ; for the text coincides with one already cited (CXLVI). The meaning is, that he must beget a son on the wife verbally betrothed, according to the law of appointments to raise up offspring, which has been already delivered. CULLÚCABHATTA concurs in this exposition ; but adds, that the brother should espouse her with the ceremonies of marriage. If any person, though acquainted with the legal impediment, be willing to accept her, may her father give in marriage a damsel *already* betrothed to another ? To this question MENU answers in the negative :

CLXXI.

MENU :—Let no man of sense, who has once given his daughter to a suitor, give her again to another ; for he who gives away his daughter, whom he had before given, incurs the guilt and fine of speaking falsely in a cause concerning mankind.

He incurs the guilt thus propounded ; “ *He kills a thousand kinsmen* by false evidence concerning the human race*.” This text resolves the doubt whether a damsel may be again given in marriage, since the bridal contract was not complete, because the married pair had not proceeded to the seventh step (CLXIX).

CULLÚCABHATTA.

Thus, since gift acquires validity from the mental act of giving (for donation is a mental act), and since dominion ceases on the

the verbal promulgation of donation, the question, whether a second gift may be made, cannot exist. The objection is thus answered. But, if the husband's brother be willing to accept her, she may be given to him, as declared in the following text :

CLXXII.

MENU and VASISHT'HA ;—If a nuptial gratuity have actually been given to a damsel, and he who gave it should die *before marriage*, the damsel shall be married to his brother, if she consent.

This is limited to the case where a nuptial gratuity has been given : the former text (CLXX I) is applicable to the case where no nuptial gratuity has been received, and it assumes the form of an appointment to raise up offspring. **CULLÚCABHATTA.**

Consequently, in his opinion, this difference is established : if a nuptial gratuity have been given, a marriage with the husband's brother takes place ; if none have been given, she remains the wife of her first husband. But others think, the gift of a nuptial gratuity here denotes generally that she is betrothed : and thus, if the damsel consent, she may be married to her husband's brother ; but if she do not consent *to that marriage*, an appointment to raise up offspring may take place, or she may lead a life of chastity. The consent of her husband's brother is also requisite, for the damsel is blemished by *having been affianced*. A nuptial gratuity having been incidentally mentioned, **MENU** censures the receipt of it ;

CLXXIII.

MENU ;—But even a man of the servile class ought not to receive a gratuity, when he gives his daughter in marriage ; since a father, who takes a fee *on that occasion*, tacitly sells his daughter.

2. Neither ancients nor moderns, who were good men,

men, have ever given a damsel in marriage, after she had been promised to another man :

3. Nor, even in former creations, have we heard *the virtuous approve* the tacit sale of a daughter for a price, under the name of a nuptial gratuity.

Even a man of the servile class ought not to receive it, much less should a twice-born man conversant in sacred literature. Is not this inconsistent with the text, which mentions the ceremony of *Asuras* as peculiar to a mercantile and a servile man* ; for an *Asura* marriage is preceded by the acceptance of a nuptial gratuity *from the bridegroom*? According to good authorities, the *Asura* marriage is approved so far as it concerns the bridegroom, and is reprehended in as much as it concerns him who gives the damsel.

One text (CLXXIII 2) refers to the case where a nuptial gratuity has been actually received ; the other (CLXXI), to the case where none has been accepted. CULLÚCABHATTA.

The meaning is, that there is not consequently any *vain* repetition. But others hold, that the first text has the form of a precept ; but this text (CLXXIII 2) states the authority of practice : the subsequent text (CLXXIII 3) censures nuptial gratuities, and is no repetition of the preceding text (CLXXIII 1). CULLÚCABHATTA, however, admits that it is a repetition of prior texts. He explains “ former creations,” former periods of *destruction and renovation of the world*.

CLXXIV.

VASISHT'HA : — If her husband die after a damsel has been given to him with water poured on his hands, and troth verbally plighted, but before she has been contracted to him by holy texts, that virgin belongs to her father alone.

CLXXV.

YAMA :—Neither by water poured on his hands, nor by verbal promise, is a man acknowledged as husband of a damsel; the marital contract is complete, after the ceremony of joining hands, on the seventh step of the married pair.

That a damsel can only once be given in marriage, supposes her married by the ceremony of joining hands.

RAGHUNANDANA.

Here is an *apparent* inconsistency with the text of MENU (CLXX); for he prohibits the gift of a damsel to any other. It is thus reconciled by RAGHUNANDANA; since the texts coincide with that which directs the damsel to be married to her husband's brother, if she consent (CLXXII), a *Cshétraja* son should be procreated by her husband's brother, if the damsel consent; else, she may be married as a virgin. The subsequent text (CLXXI) relates to a complete gift. This opinion of RAGHUNANDANA is followed in practice by the principal *Bráhmaṇas* of *Rā'd'ha*.

Others think, that the text of VAŚISHT'HA (CLXXIV) intimates the gift of the damsel by nuptial rites to her husband's brother or other kinsman, at an auspicious moment; but if they refuse her, it shows that she may be given to another. The text of YAMA (CLXXV) has the same import, and alludes to participation of the husband's family and wealth. Thus, if the bridegroom die after the damsel has been affianced to him, the possibility of giving her in marriage to another is shown. It should not be asked, how is a second gift possible, since the father's property is annulled by his mental relinquishment? Under the authority of the text, her father, even without property, may use expressions signifying gift, to effectuate the *nuptial* ceremony. Or the text of VAŚISHT'HA (CLXXIV) may be referred to a promised gift: and thus, if the bridegroom die after a girl has been promised in marriage to him, *another* may raise up a son for him alone; for a thing promised ought not to be given to another. It should not be objected, that the text of MENU (CLXX I) concerns a gift in words, not a *mere* promise. Promise

mife is indicated by the expreffion “ troth plighted.” If there be no kinsmen of the bridegroom, or if they refuse the girl, ſhe may be given to another : but the girl’s conſent is required ; for, if her conſent be requiſite in giving her to her huſband’s brother, ſurely it is required by law in giving her to another.

CLXXVI.

YÁJNYAWALCYA :—Once is a damſel given in marriage ; he who detains her ſhall incur the puniſhment of a thief : but if a worthier bridegroom offer, he may take the damſel though given away, *provided the firſt were undeſerving.*

“ Given away ;” given in words *only*. Since the firſt bridegroom is undeſerving through his ignorance of ſacred ſcience and the like, a worthier bridegroom, ſuperior in the excellent qualities of competent ſcience and the like, *may be accepted* : this concerns an *Aſura* marriage. SÚLAPÁNI.

So, after premiſing the ſingle gift of a damſel,

CLXXVII.

NÁREDA thus *proceeds* :—This law is declared in regard to five forms of marriage, namely, the ceremony of BRAHMÀ and the reſt (*the ceremony of the Dévas, of the Ríſhis, of the Prajàpatis, and of the Gandharvas*) ; but the gift requires excellent qualities *in the bridegroom for its irrevocable validity* in three forms of marriage, namely, the ceremony of the *Aſuras* and the reſt (*the ceremony of the Racſhaſas, and that of the Piſáchas*).

SÚLAPÁNI adds, that the ceremony of the *Racſhaſas* and that of the *Piſáchas* are intended by the term “ and the reſt.”

“ Given away” (CLXXVI) ; given in words, promiſed, and ſo

so forth. "This law" (CLXXVII); the precept limiting a single gift. RAGHUNANDANA.

GÓTAMA :—A man shall not give even what he has promised to a person whom the law declares incapable of receiving*.

His want of religious qualification is here the cause of his not being entitled to the gift.—The *Retnācara*, cited by RAGHUNANDANA in the *Udvāha tatwa*.

CLXXVIII.

VASISHT'HA :—From a man of contemptible birth, from an eunuch or the like, from a degraded man, from one afflicted with epilepsy, vicious, or tainted with *shocking* diseases, and from a frequenter of harlots,

2. A parent may take back a damsel, though given away; and so may he one married to a man *known from his family name to be sprung from the same primitive stock*.

"Epilepsy;" the disease so called, originating in vitiated air: it is the cause of his falling into water, or fire, and the like, and occasions loss of sense. "Married to a man sprung from the same primitive stock:" the terms are explained by respected authorities, 'given in words by a man of the same primitive stock.' Some observe, that the phrase is comprehensive, including *sapindas* and the rest; else her marriage could not be effected.

CLXXIX.

MENU :—But it is better that the damsel, though marriageable, should stay at home till her death, than

* Book II, Chapter IV, v. XLVII.

than that he should ever give her in marriage to a bridegroom void of excellent qualities.

“Void of excellent qualities;” destitute of science, and similar qualities. CULLŪCABHATTA.

It should be understood, that the offence arising from not disposing of a marriageable damsel, occurs only when a proper husband, possessing the qualifications suitable to her family, can be found.

CLXXX.

CĀTYĀYANA:—If a damsel is betrothed to two or more persons, and the first bridegroom arrive before the second nuptials are completed, then, of all the persons to whom she is promised, he to whom the first promise was made shall obtain her; 2. And the other shall recover what he had given to the bride: but if the first bridegroom arrive when the *second* nuptials have been consummated, he shall receive back what he had given.

He must restore the girl to the first bridegroom, and pay a fine to the king, as directed by YĀJÑYAWALKYA (CLXXVI).

CLXXXI.

CĀTYĀYANA:—Should a man depart after giving the nuptial gratuity, it becomes the exclusive property of the damsel; she must be detained one year, and may *afterwards* be legally given in marriage to another:

2. But if tidings arrive, she must wait three years, and after that period the girl may be given to another at pleasure.

“ If

"If tidings arrive;" if news be received.

RAGHUNANDANA.

This supposes that he went abroad without the assent of the girl's father, but fixed a time for the marriage agreed to. "A nuptial gratuity:" there is no proof that he who has given nothing ought to be waited for,

CLXXXII.

NÁREDA:—The man who abandons an unblemished damsel after accepting her, shall be amerced in a pecuniary fine; and he must marry that damsel.

CLXXXIII.

YÁJNYAWALKYA:—He who gives a faulty damsel in marriage, without disclosing her blemish, shall be fined in the highest amercement; and he who abandons an unblemished girl, shall be amerced in a hundred *mṛśhas*.

The penalty for giving a *faulty* damsel in marriage without disclosing her blemish, and for a bridegroom abandoning a blameless girl, is the highest amercement.

SULAPÁNI,

CLXXXIV.

MENU:—Even though a man have married a young woman in legal form, yet he may abandon her, if he find her blemished, afflicted with diseases, or previously deflowered, and given to him with fraud:
2. If any man give a faulty damsel in marriage, without disclosing her blemish, the husband may annul that act of her ill-minded giver.

"Have

“Have married ;” have promised to marry. On this CULLÚ-CABHATTA observes : ‘ Even though he have received her in the form suggested by the following precept, or in another form, “ The gift of daughters in marriage by the sacerdotal class is most approved, when they have previously poured water into the hands of the bridegroom *,” he may abandon her, if he discover, before the seventh step, that she has an ill token ascertained from palmistry or the like, that she is diseased, has been accused of losing her virginity or the like, or was given to him with fraud by concealing a *superfluous finger or other* redundant member or similar deformity ; hence there is not in such a case any offence in abandoning her : for this purpose, and not to direct the abandoning of her, the text is propounded. The other text is also propounded to show that there is no offence in abandoning a faulty bride : he may, by returning her, annul the act of her ill-minded giver, who gives a faulty damsel in marriage without disclosing her blemish.’

Others hold, that the first text declares there is no offence in abandoning a bride, even without finding a blemish, when the father has substituted another in place of her whom he had shown, and who, unknown to him, had an ill token according to palmistry, had a redundant finger or other member, was afflicted with a severe distemper, had been deflowered or the like ; and which blemish he afterwards discovered. But the other text declares, there is no offence in abandoning a damsel, whose blemishes the bridegroom discovers after her father had betrothed her to him without disclosing her defects though known to himself.

MENU propounds the blemishes of damsels :

CLXXXV.

MENU :—Let the twice-born man espouse a wife of the same class with himself, and endued with the marks of excellence.

2. She who is not descended from his *paternal or maternal* ancestors within the sixth degree, and who

* MENU, Chap. III, v. 35.

who is not known by her family name to be of the same primitive stock with his father or mother, is eligible by a twice-born man for nuptials and holy union :

3. In connecting himself with a wife, let him studiously avoid the ten following families, be they ever so great, or ever so rich in kine, goats, sheep, gold, and grain :
4. The family which has omitted prescribed acts of religion ; that which has produced no male children ; that in which the *Vêda* has not been read ; that which has thick hair on the body ; and those which have been subject to hemorrhoids, to phthisis, to dyspepsia, to epilepsy, to leprosy, and to elephantiasis.
5. Let him not marry a girl with reddish hair, nor with any deformed limb ; nor one troubled with habitual sickness ; nor one, either with no hair, or with too much ; nor one immoderately talkative ; nor one with inflamed eyes ;
6. Nor one with the name of a constellation, of a tree, or of a river, of a barbarous nation, or of a mountain ; of a winged creature, a snake, or a slave ; nor with any name raising an image of terror ;
7. Nor one very fat or very lean ; or very tall or very short ; nor one older than himself ; nor one wanting a limb ; nor one prone to theft or contention.
8. Let him choose, for his wife, a girl whose form has no defect ; who has an agreeable name ; who walks *gracefully* like a phenicopteros or a young elephant ; whose hair and teeth are moderate respectively

tively in quantity and in size ; whose body has exquisite softness.

9. Her who has no brother, or whose father is not well known, let no sensible man espouse, through fear lest, *in the former case*, her father should take her first son as his own *to perform his obsequies* ; or, *in the second case*, lest an illicit marriage should be contracted.

Let him avoid these families (CLXXV 3), however much they abound in kine, goats, sheep, money, and grain : “ the family which produces no male children,” but daughters only ; since the procreation of a son may not be expected : “ that in which the *Vêda* has not been read ;” in which knowledge of the *Vêda* is deficient : and that in which even the females have long and thick hair on the body : in such a family let him not espouse a girl, be she ever so young ; nor in those which have been subject to hemorrhoids (the particular disease so called), phthisis or marasmus, dyspepsia or depraved digestion.

Let him not marry a girl immoderately talkative, or blameably loquacious ; nor one with the name of a constellation or lunar asterism, or with the name of a barbarous nation devoid of science and refined language, or with the name of a snake or serpent, or of a slave or bondsman ; or with any name raising an image of terror, or exciting sensations of fear.

CLXXXVI.

YÁJNYAWALCYA :—*Sprung* from a noble family of learned priests, which is recommended by ten persons, *universally* celebrated, and not tainted with contagious diseases and crimes ;

2. Endued with these excellent qualities, equal in class, and eminently learned, should be the bridegroom *chosen for a damsel*.

“ Endued

“Endued with these excellent qualities ;” sprung from a family celebrated as free from the contagion of distempers and crimes ; and also possessed of the good qualities mentioned by other Sages.

CLXXXVII.

NÁREDA :—The penalty is double for a bridegroom who conceals his own blemishes when he marries ; and a wife may abandon a husband who communicates any thing noxious.

“Penalty ;” amercement.

‘SULAPÁNI:

“May abandon ;” no fine to the king is incurred by a wife abandoning such a husband.

CLXXXVIII.

MENU :—A wife, given by the gods, *who are named in the bridal texts*, let the husband receive and support constantly, if she be virtuous, though he married her not from inclination : such conduct will please the gods.

2. To be mothers, were women created ; and to be fathers, men : religious rites, therefore, are ordained in the *Véda* to be performed *by the husband together with the wife*.

CLXXXIX.

MENU :—In whatever family the husband is contented with his wife, and the wife with her husband, in that house will fortune be assuredly permanent.

2. Certainly, if the wife be not elegantly attired, she

- she will not exhilarate her husband; and if her lord want hilarity, offspring will not be produced.
3. A wife being gaily adorned, her whole house is embellished; but if she be destitute of ornament, all will be deprived of decoration.

CXC.

MENU:—"Let mutual fidelity continue till death:" this, in few words, may be considered as the supreme law between husband and wife.

2. Let a man and woman, united by marriage, constantly beware, lest, at any time disunited, they violate their mutual fidelity.

Let the mutual fidelity of husband and wife, in respect of religious duty, wealth and pleasure, continue till death: this, briefly, should be deemed the supreme law between man and woman. They must always take such care that they infringe not mutual fidelity, becoming disunited in any matter concerning religion, wealth, or pleasure.

CULLÚCABHATTA.

the will not exist; and it has
been said that the law is
a wife being guilty of adultery
is punished; but if the existence of a marriage
all will be deprived of decoration.

CYC

Marriage is a mutual fidelity continuing till death;
this in few words may be considered as the
prime law between husband and wife.
Let a man and woman, united by marriage, con-
stantly beware lest at any time diminished, they
violate their mutual fidelity.

Let the mutual fidelity of husband and wife, in respect of re-
gular duty, wealth and pleasure, continue till death: this
being, though, the prime law between man and wo-
man. They must always take such care that they intrust not
mutual fidelity, becoming distant in any matter concerning re-
gular duty, wealth or pleasure.

CULUCABHATA.

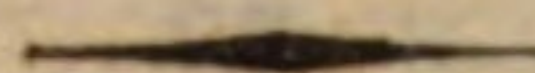
XXIX

Let a husband and wife, in respect of re-
gular duty, wealth and pleasure, continue till death: this
being, though, the prime law between man and wo-
man.

BOOK 11
INHERITANCES.

PART II.

CHAP. I.



PARTITION OF PATRIMONY.

SUCCESSIONS.

SECT. IV.—On Succession in general.

Art. I. On Property; and on the Transfer of it.

NAREDA.—That title of the title of a man's estate
tribution of the personal estate is regulated by
long has been called, by the title, *Succession* of
Inheritance.

Under which, you will find, that the title of a man's estate
is regulated by the title of a man's estate.

What is called, *Succession* in the title of a man's estate, is called
by the title of a man's estate.

PART II.

SUCCESSIONS.

BOOK

K K 2

BOOK V.

ON

INHERITANCES.

CHAP. I.

ON

PARTITION OF PATRIMONY.

SECT. I.—*On Succession in general.*ART. I.—*On Property ; and on the Transfer of it.*

I.

NÁREDA :—That title of law, under which a distribution of the paternal estate is instituted by sons, has been called, by the wise, Partition of Heritage.

“ Under which ;” under which title of law. “ Is instituted ;”
is made. The *Retnācara*.

What descends from the father is “ paternal ;” and that is
called,

called, Property devolving *on sons* by the death of the father. Both expressions, “*paternal estate*” and “*by sons*,” are merely illustrative of relation or consanguinity; for the term ‘inheritance,’ or ‘partition of heritage,’ is also used to signify a distribution of property among any relatives. Accordingly NÁREDA also, having premised the forensick term Partition of Heritage, notices the distribution of property left by the mother and the rest. So MENU likewise, premising the same title, without employing the word father or other limited designation, propounds the distribution of property in every relation. JÍMÚTAVÁHANA.

II.

MENU:—Thus has been declared to you the law, abounding in the purest affection, for the conduct of man and wife, together with the practice of raising up offspring *to a husband of the servile class on failure of issue by him begotten*: learn now the law of Inheritance.

“Estate” (I); property. “Paternal;” obtained through the relation *of the son* to the father. RAGHUNANDANA.

Consequently that property, on which a distribution or partition of a vested right, depending on relation *or consanguinity*, may be instituted, is named distributed heritage, a title of jurisprudence. In short, heritage is a title of law. Since the merits of opposite pleas set up by a plaintiff and defendant (“this allotment of shares is improper; this allotment of shares is equitable;”) may be determined under *the title of Heritage*, which comprehends the allotment of shares, that title of judicial procedure is taken in a literal sense, “*inheritance or heritage*.” Since this word, and the term which occurs in the text of MENU (Book II, Chapter I, v. II 4. *and which term has been there explained “law of inheritance”*), may signify the partible heritage, because a rule expresses, that neuter derivatives from active words are similar to nouns denoting substance, or because the term is derived in the passive form, there is no objection *to this interpretation*. Thus some lawyers expound the terms.

Since

Since this title of jurisprudence has not been expressly distinguished by that name, the obvious design of the writer would be subverted; *for the other seventeen denominations which occur in the text of MENU, namely debt and the rest, nonpayment of wages, larceny and the rest, bear an abstract sense, whilst one denomination only would signify the thing which possesses the abstract nature.* The title of Loan and Payment comprises the several abstract properties which constitute a creditor and so forth, as has been already explained. By the rule quoted, grammarians, who contend that action is single, acknowledge its similarity to substance, and thereby permit the use of such terms in the dual and plural numbers. Words of this description do not denote substance. If they did, there could be no inflection with a neuter sense, since the derivatives would not bear the abstract sense of the verb. The same must be universally admitted on the supposition of a passive inflection. If that be questioned, then *the text must be thus paraphrased*: on whatever property a partition or distribution of the patrimony is instituted, such distribution of that property (for the connexion of the correlatives is positive,) is a title of jurisprudence called Partition of Heritage. In a word, the partition which takes place in respect of partible heritage, alone constitutes the forensick title denominated Partition of Heritage.

Is not partition of heritage (*dāyabhāga*) termed distribution of inheritance (*dāyabhāga vibhāga*)? What use is there in such an incumbered definition? Yet there is no vain repetition; for it conveys the meaning of the term (*dāyabhāga*) inheritance or partition of heritage. *The answer is*; no such objection can be made, since the legislative independence of the Sage must be acknowledged. Or so much is added to aid the perfect comprehension of the sense conveyed by the term heritage: for, since the partition which takes place in respect of partible property devolving from a father on his sons, is called partition of heritage, it follows, that such property is (*dāya*) heritage; and, since the term heritage is also used to signify property of which no partition is made, participation, not partition, is strictly intended.

Some consider the relative as employed in the seventh case substituted for the first. Consequently the sense is, "that partition,

which is instituted, is partition of heritage." But others read, "yat tu or yās tu, but that," instead of "yatra, where or in which," and interpret the text similarly. The learned descendants of learned ancestors take the relative in the seventh case, with a causal sense: the subject is the title of law which consists in partition; and the word partition, which occurs in the text, is intended to justify distribution by a causal derivation *of the term*: consequently the sense is, "that title of law, whereof partition is the element, and which is established as the cause and ground of a distribution by lots or the like, is called Partition of Heritage." Partition therefore, as a title of law, bears an abstract sense; and this well reasoned opinion is unexceptionable. Again; the partition of heritage, or the heritage which is divided (according to the different opinions mentioned), is signified by the term Inheritance; and that constitutes the title of judicial procedure. Such is the interpretation of RAGHUNANDANA, JIMÚTAVÁHANA and the rest.

But, in fact, that distribution, participation, or ownership of the paternal estate, (or wealth descending from the father in consequence of his death or the like, or, in other words, property of the deceased father,) which is established or acknowledged by the sons to vest in a certain owner, is a term of law relative to ownership. Consequently, from the relation of the term, ownership itself being the title of law, the property of the estate, which belonged to a deceased owner, being vested *in another* by reason of consanguinity, is inheritance.

Or the relative may be expressed in the seventh case with the sense of prop or support; as in the example, "he resides with his preceptor;" and partition signifies allotment. Consequently the sense is, that ownership of heritage, in right of which sons make an allotment, is a title of law named Inheritance. Ownership, as the support of an allotment of the heritage, is a cause mentioned solely by way of illustration. Hence, even the ownership of heritage which is not divided is unexceptionably considered as inheritance; and thus the text of BAUDHAYANA, the rules of VISHNU (III and CCCCXVII) and other texts are truly explanatory of inheritance. This has been sufficiently discussed.

If partition, as a term synonymous with division, signify the separation of the integrant parts of the thing divided, would not the

the thing be destroyed? If it signify disunion of *interests among* the brethren in respect of each other's property, no separation could be made of property connected with the property of another brother, even though the *individual* right be ascertained. *To this it may be answered*, the act of ascertaining the *individual* right, or the ascertainment of a *separate* title, is partition, or division; for, on the death of the father, his right is divested, and a title vests in his son or other heir; and in the case of two or more sons, each son has a several title to that property, which shall *thereafter* be received by him: but, since that is absolutely invisible, and cannot be perceived by the eyes or other senses, it is ascertained by lots or the like, and argued from logical inference alone; that solely constitutes ascertainment: or the consequent act, such as distribution by casting lots or the like, is signified by the term partition.

But, if a single female slave, or one cow or the like, be the property left by the father, what should be the mode of proceeding, since a distribution by lots is not possible? VRĪHASPATI has provided for this case (CCCLXVI 5). Such property must be apportioned according to the reason of the law, else it would be rendered useless. In the case supposed, all the heirs have a title to the single female slave. For instance; on the death of one who leaves five sons, the eldest son has, in the first place, a right *to employ* that female slave during six days; and afterwards the next born, during other six days. In this and other modes their several rights may be adjusted; or lots may be cast, after executing a document for the regulation of periods.

Is the title to that female slave, which the eldest son possessed, divested after the expiration of those six days, or does it still subsist? On this doubt some lawyers remark, that many titles or proprietary rights over an individual, but which exist partially in respect of time*, were previously vested in the sons: these *rights* must be considered as vesting in those several persons, one after the other, at certain periods, which shall be subsequently settled by an umpire. In that case the award of such an umpire constitutes the separation of those several rights: and here the expression

* A term of logick, *avyāpyavṛtti*, by which I understand partial existence. It is distinguished into predicates partial in respect of place, and partial in respect of time. T.

expression "were previously vested," obviates the supposition of repeated lapse and revival of property. Again; a right to that female slave subsists, connected with the ascertainment that it shall subsist *in full force* on those several days awarded by the umpire: and, since this right is described as partially existent in respect of time, it does not subsist *in full force* after the close of those several periods; like the faded colour of a jar; like class and sort, such as the generalizing of names or the like, *which may vary with the change of name*; and like the temporary absence of a quality partially existent. Hence, after the expiration of the several periods, the coparcener, *whose turn is past*, may not employ the female slave. Such is the opinion of JIMUTAVĀHANA.

Is property included in the seven categories, substance and the rest, or is it distinct therefrom? To this VĀCHESPATI BHAT-TĀCHĀRYA, grounding his opinion on the *Mimāṃsā* philosophy, replies: property is a certain faculty* subsisting in the several substances; but, according to the *Nyāya* philosophy, he adds, 'ownership is a relation between cause and effect, attached to the owner who is predicated of particular substances, and subsisting in the substance by connection with the predicable.' That alone is right: property consists not in the right of aliening at pleasure, nor is it a consequence *simply* deduced from positive law, which declares the right of aliening at pleasure; for that would be an identical inference†, in this manner, if there be property, then a man may aliene at pleasure, and property is the right of aliening at pleasure: or the law declares a power of aliening at pleasure, that which is possessed as property; here again is a confusion of premises and consequence. Hence ŚRĪMĒNI says, in the *Padārtha tatva*, property is a distinct category. He considers it as a category distinct from the seven predicaments, because there is no argument by which it can be established to be a faculty, nor any argument by which it can be placed under
quality

* *Sanścāra*, faculty; enumerated by logicians among qualities: as, faculty of rapid motion; retention of ideas, or faculty of recollection; faculty of continuing the motions necessary to life; and many others. I translate it faculty, but this must be taken in a limited sense. T.

† *Ātmāśraya*, identical; a proposition not legitimate, because the predicate is the same with the subject; or an inference not legitimate, because the conclusion rests on itself, or because the effect is referred to itself as a cause. T.

quality and the rest. It exists in substance, such as gold, silver, cattle and the like.

But SRÍ CRĪSHNA TERCÁLANCÁRA holds, that as property abides in substance, so it does in quality also. For instance; the precept, "consecrate a black bull," and similar phrases, suggest the consecration of a bull, to which the quality of blackness is an attribute. Now consecration cannot take place without property; therefore property is acknowledged in respect of that to which the quality is attributed: and consequently property is proved to exist in the accident or black colour, as well as in the subject or bull. As it is said, the father is arrived, accompanied by his son; *in which example arrival is affirmed both of the accident and subject.*

That is wrong; for property in no other instance appears to abide in quality. In the example proposed, "consecrate a black bull," as in the phrase "a man carrying a staff and wearing earrings;" there is no difficulty in apprehending the consecration of a bull, with which the quality of blackness is contemporary. Consequently, the consecration of the bull, and the contemporary existence of the quality of blackness in the bull, are required by the precept*.

Logicians, admitting the numerosity of the bull changed by growth, diminution, and the like, (*or in other words, denying the permanent identity of a body subject to change,*) and apprehending the consequent difficulty from establishing various property, affirm ownership to be vested in the man; and the predicable, consisting in the connection of essential properties, is acknowledged to adhere to the bull, which may be of various colours.

Whether property inhere in the thing, or ownership in the man, what is the cause of property? VÁCHESPATI BHATTACHÁRYA replies, 'acquisition is the sole cause of property: and 'that acquisition is the act of the acquirer, *earning wealth in such modes as are* ordained by the law. This, again, is of three sorts: 'in some instances it is corporeal, as agriculture, commerce, or 'the like; in others it is verbal, as teaching the sacred sciences 'and the rest; in others again, it consists of mental design or
volition,

* Men of the fervile class are enjoined to dismiss black (literally blue) bulls on certain occasions. The higher classes, on the same occasions, dismiss bulls of a reddish white colour. T.

‘volition, as acceptance of gift, embezzlement of deposits and
 ‘so forth. But, in the case of heritage, since a law declares
 ‘that “in some instances acquisition is by birth,” and the text
 ‘of GÓTAMA expresses “even by birth alone a man may gain
 ‘ownership,” the birth of sons and the rest constitutes acqui-
 ‘sition, through the medium of the connection of filiation: that
 ‘also is corporeal.’

Acquisition of various kinds becomes the cause of property
single in its kind; as grass, flint, or touchwood*, and the igniting
 gem, are causes of fire. As flame may be produced from an
 igniting gem even without grass, though fire be uniform in its
 kind, or without the gem or grass, from very inflammable wood,
 and consequently grass and the rest become causes of fire *single in*
its kind; so do agriculture and the rest become causes of property
single in its kind. Thus grain and the like first become the pro-
 perty of him who raises them; and next, of the purchaser, donee,
 or the like: in these cases, the property of the original owner is
 only de vested by his own volition; and that volition proceeds
 from the acceptance of a price, from the wish of moral purity or
 the like, from service and so forth, or from solicitude for the
 accomplishment of his purpose. In these cases, property vests
 in the purchaser through the payment of the price and accept-
 ance of the chattel transferred: it vests in the donee solely through
 acceptance of the chattel; for no otherwise does he acquire it:
 it vests in servants and the rest, through the medium of the mas-
 ter’s volition, in consequence of the performance of certain work;
 or the acceptance of the money may be the sole origin of pro-
 perty vesting in servants and the rest. In case of inheritance,
 birth alone is cause of property; and that birth is a particular
 relation of body, not a relation taking place at the first instant of
 procreation.

May not a son have property in the wealth of a living parent?
 Let it not be answered, this is admissible; for it would contra-
 dict the law: DÉVALA (V) declares, that, while the father lives,
 his sons have no ownership of his estate. If this be proposed,
 the argument is denied: DÉVALA, declaring the want of owner-
 ship

* The word *aran'i* is subsequently explained a particular sort of wood, and
 should signify very inflammable wood, from which fire is obtained by attrition;
 but the same term is frequently used for a flint. T.

ship while a faultless father is living, in effect assigns the death of the father as a *mediate* cause of property vesting in his sons; by propounding the term "faultless," he suggests the degradation of a father as a *mediate* cause of transferring property to the son. But, since both these are inconsequent; since it is difficult to prove the cause from their producing a divestiture of property; and since it is a false conclusion in logick*, because the same may be truly assigned as the cause of another effect; therefore, omitting these, the *immediate* cause is in effect assigned in the divestiture of the father's property.

That being the case, would not the property of the father's estate repeatedly vest every instant in the son, after the death of his father; for the divestiture of the father's property, and filiation, or relation of the son to the father, subsist continually? Let it not be answered, that there is no objection, since the cause may be assigned in the divestiture of the father's property, which may be supposed to take place at the moment of his son's birth: the possible title of the son to wealth bestowed on priests by the father in his lifetime would be imperfectly barred. If this be alleged, the answer is: since property vests in the purchaser through the price settled, and through his acceptance of the bargain, even though the chattel be not delivered; and in the donee, through his acceptance of the gift; property is established to be an impediment to concurrent property; hence there could be no property arising every instant, and rolling like the waves of a stream: and the chattel being delivered by the father, no right is vested in the son, since it is resisted by the father's declared will, "this shall belong to the priest." In like manner, even in the particular case of usucaption, when the father suffers land to be possessed by a stranger during twenty years, since the property is divested, no right is vested in the son; for property dependent on relation to the

* *Anyat'ha sidd'hi*, in logick, disproves a cause. Cause is what necessarily precedes; but every thing which has preceded, is not the cause of the event considered: in the definition of cause, it is therefore a requisite condition, (in the language of *Hindu* dialectics,) that it be not true of something else. This may be best understood from the five heads into which it branches: 1st, that by which the more immediate cause is inferred, or, 2nd, by which it becomes perceptible (as the abstract essence, or the colour of a thing); 3d, what is already assumed as the cause of another unconnected event; 4th, what is assumed as the cause of the immediate cause; 5th, what did not necessarily precede the event considered. T.

the father, is resisted by adverse possession suffered by that father. Again ; since the title of a daughter and the like is resisted by the intervening title of a son and the rest, which is dependent on affinity, daughters and the rest have no right to the patrimony if a son be living. No other cause of *succession* should be established besides the devesture of the father's property ; and the text of DÉVALA is a lax expression of the consequence, when a cause subsists for such an effect. For instance ; if no property vest in the son while the father's title subsists, then surely a son has no ownership while the father is living.

JÍMÚTAVÁHANA affirms, that acceptance is not the cause of property ; were it so, the acceptor, performing the act which confers property, would be the giver, *which is absurd* : but gift alone, like the annihilation of the party's own property, becomes the cause by which the property of another is produced. Nor should it be argued that receipt is acceptance ; that acceptance consists in making that his own which was not his own : that this operation is an act, and that act is the receipt of the thing given : before receipt, the chattel was evidently not his own ; but when receipt has past, it has become his own : receipt alone is therefore the cause of property. For, *to this it may be replied*, the title effected by acceptance consists in the power of aliening at pleasure ; because, a gift being made to an absent donee, he does not appropriate it at pleasure, even though property be vested in him, since he is ignorant of his right. When the gift becomes known to him, he then knows, " this is mine ; " that alone is acceptance : afterward, knowing it to be his own, he appropriates it at pleasure, without needing the assent of another. Nor should it be alleged, that, acceptance being a mode of acquisition, as recorded in the text, " by sacrifice, by teaching the scripture, and by acceptance of gifts, a priest may earn wealth," it follows that acceptance generates property. " Earn " does not here signify generate property, but induce an act which does generate property, such as the surrendry on the part of the giver. For, as *the priest*, by interpreting the *Vēda*, or assisting another to sacrifice, disposes the giver to bestow a present, and obtains the surrendry from him ; so likewise, since the giver entertains the notion that *the priest* will accept it, he, who yields future acceptance connected with that notion, effects the surrendry from the giver ; else that

that notion could not exist, since there would appear no object of it. May not "earn" signify generate property? That sacrifice and the rest generate property, is admitted. Should it not be likewise affirmed, that acceptance, howsoever involuntary, generates property? Even the acceptor would be the giver; for the donor is he who produces such an effect as the investiture of transferred property, and that description would be applicable to the donee, *which is absurd*. Let it not be alleged, that the act of the giver is not the efficient cause of property vested in a person other than the former owner, because there is no authority for considering gift as the efficient cause of property vested in another. MENU declares donation alone to be a cause of property vested in the donee; "gift is the cause of ownership." Such is the opinion of JIMÚTAVĀHANA.

VĀCHESPATI BHATTĀCHĀRYA holds, that MENU mentions gift as contributing to the property vested in the donee, and that through the divestiture of the property held by the former owner. But acceptance is a cause of property, under the authority of the text cited by SÚLAPĀNI (and quoted in the preceding comment). Sacrifice and teaching the *Vēda*, mediately causing property, are truly means of acquisition: but future acceptance cannot be a mode of acquisition, because there can be no actual object considered; and the foregoing argument is thus weakened. Accordingly, should a donary be given, intended for priests in general, any one priest may possess it; else, since there is no ground for selection, should one take a chattel owned by all priests, he must distribute it to all, like joint-property. Nor can it be established, that property vests *originally* in him alone who subsequently takes it. Of this there is no proof. Nor should it be objected, that the seizure of a present intended for a priest residing at *Cāśī* would be no theft. This may be unexceptionably held admissible. Or, terming it seizure of another's property, there is no objection to consider as theft the seizure of a chattel intended to become the property of another, as well as the seizure of a chattel actually possessed as property by another.

DHAUMYA :—On failure of the proper object, how shall a present be disposed of, which was bestowed on

on an absent person? Let it be delivered to kinsmen sprung from the same original stock, or, on failure of these, to his distant kindred.

From this text, which enacts, that a chattel given away, even though it have not been accepted, must be delivered to the kinsmen of the person intended, it appears that property is conferred by mere gift without acceptance; else, why should the kinsmen of the person intended be alone mentioned? Consider the reverse as true; for, did property vest in the person intended through gift alone without acceptance, then it must of course be taken by a son or other heir, because it has become *a part of the patrimony*: and for what purpose has the text of DHAUMYA been propounded? A present made for the benefit of a deceased *Brâhmana* erroneously supposed to be living, must be delivered to his son or other heir: is not the text designed to convey this precept? What follows from this? For *the argument supposes that* property was vested before acceptance. Therefore, should a present not be delivered to him for whom it was intended, the law shows the gift to be imperfect: hence it must be delivered *to complete the gift*. In answer to the question, 'to whom should it be delivered if he died before or after the donation?' The text of DHAUMYA ordains, that it shall be delivered to the son or other heir, in like manner as donaries or the like given in honour of deities must be delivered to priests and the rest.

Since the text cited in the *Malamâsa tatwa** declares the giver guilty of theft, if gold given, but not delivered, be lost *by his fault*, and not made good, and since theft consists in the seizure of another's chattel, a chattel given away becomes the chattel of another even before his acceptance: being acknowledged to belong to the donee, surely it must evidently follow that property was vested in him. It is so after the chattel has been given: *but* if it immediately become the property of the donee, then the seizure of it would be truly a theft, under the text which describes theft in general; and the enunciation of this text would be superfluous. Consequently this text intimates a figurative theft, considering a chattel surrendered for the benefit of another, though not yet accepted *by him*, as similar to property vested in another.

* See Book I, Chap. II, Sect. III. Art. III.

another. Admitting the property of the donee, since the giver has not seized, *but only lost*, the chattel, the definition of real theft is inapplicable, even according to your opinion; therefore, seizure and theft, in this place, are both figurative.

If any thing have been given away by a donor for the benefit of a priest, it is ordained that it shall be delivered to his sons should the donee die before delivery; shall it be delivered to the son alone, or to all the sons and grandsons in the male and female line, and the rest? or, is the object attained by delivering it to the sons of daughters and the rest, even though a son of the donee be living? To this question it is answered, the donor must deliver it, in the order of proximity, to the remoter heirs respectively, on failure of nearer heirs, as suggested by the text of DHAUMYA; and that order is similar to the sequence of inheritance.

Is not the sequence different from the series ordained in the case of inheritance, since the text states this order, "kinsmen sprung from the same original stock, and distant kindred:" this order alone should therefore be admitted: in the first place, it should be delivered to any one kinsman sprung from the same original stock; next, on failure of such, to distant kindred? No; for that sequence is also unacknowledged by the text of NÁREDA (Book I, v. CCXXX). Consequently, the order of inheritance should alone be admitted; for this chattel is similar to one which had become the father's property. In the first place, it should be delivered to the son, grandson, or great-grandson; on failure of these, to the widow. According to the opinion of those who contend for property vested before acceptance, this must certainly be established.

If the donor delivered it to one son alone, and other sons be living, then, since the acceptor alone made the acquisition, the rest would have no title; *or*, even though all should have a title grounded on the original intention in favour of the father, he to whom the chattel is delivered would share a double portion, because he gained the property. Let it not be said that this is admissible: it contradicts JÍMÚTAVÁHANA and the rest; for, according to his opinion, property is acknowledged prior to acceptance; and all the sons shall therefore receive equal shares, since that chattel is a part of the patrimony. If this be proposed, the answer is, he shall be compelled to give it up, if he

receive such a chattel without distributing to his brothers their shares, in like manner as when such a chattel is taken by a stranger. But if he fraudulently take it *as a present to himself*, not considering it *as a gift to his father*, it is similar to a thing given to many persons, neglected by the rest, and received by one.

Here it should be observed, that the donor ought to deliver the present to all the sons *jointly*; else the object of the gift would not be attained. Hence, he should not deliver it to a daughter's son, if a son be living. In like manner, should a stranger seize on the road a chattel sent by one person to another, he shall be punished as a robber, and the chattel must be recoverable from the thief by him for whom it was intended.

Consequently, in the case of gift, acceptance alone generates property. Accordingly an inanimate being can have no property, through the want of the requisite acts, from the effort with which an acquisition originates, until *final* acceptance. But, according to the opinion of those who maintain property vested by mere gift *without acceptance*, a thing which is given to a deity, whose essence is a text of scripture, becomes the property of that deity. Let it not be asked, by way of objection, what is the conclusion of those who maintain the animation of deities? The apparent difficulty is reconciled, although deities, according to this opinion, be animated, by not admitting their acceptance of gifts. In like manner, insects and the rest have no property in water and other things consecrated for the benefit of all beings.

Surrendry, intended to convey property to another, and attended by the effect of annihilating the property of the party himself, is gift. The acceptor is not the agent in that act; therefore he is not the giver (*an absurd consequence objected by JĪMŪTAVĀHANA*). Let it not be said, the literal sense of the verb "give" is obtained by including in it the consequence produced of creating property vested in another. That is prolix; for the definition of consequence or effect is prolix in comparison with that of intention or special object. Nor should it be objected, that, if this be the case, it should be said, 'attended with the object of annihilating his own property;' why insert "effect?" Were it so, consequence not being included in the sense of the term, "give" would be an intransitive verb; since it could have

no subject suffering the effect denoted by the abstract sense of the verb*. Nor should it be objected, that there is no ground for selection; the effect might be affirmed either of the giver's own property annihilated, or of another's property *created*. The law showing that gift annihilates the giver's own property, there is a ground for selection. Nor should it be alleged, that the words of MENU, "gift is a cause of ownership," form a law which shows the production of property vested in another. The difficulty is removed by inferring the production of property vested in another, through the medium of the divestiture of property held by the former owner. Or, be it so; the subject may consist solely in the object, like the phrase 'he knows the jar.' Consequently the verb "give" signifies *an act of volition*, to which the previous annihilation of the donor's own property is attributive, and which intends *the conveyance of property to another*: or it signifies *surrendry effecting the investiture of property in another, after annihilating the rights of the former owner*. Accordingly the phrase "he gives a cow," appears to signify, 'cancelling his own property, he makes the cow appertain to another.' The acceptor is not the agent in such a gift; for he is that other person, and he does not cancel the former property: and thus "cause of ownership," in the text of MENU, bears a literal sense. Hence the objection, that gift, as mentioned by MENU, would occur in the case of neglect occasioning the property of another through the medium of annihilating the party's own title, is obviated; for, in this case, *neglect* becomes an immediate cause of property vested in another. Even in the case of sale and the like, there is no objection to this use of the verb; 'having received the price, he gives the cow.' In like manner, the verb "give" is properly used for the payment and advance of debts, "if the time of payment be not expressed, the debt shall be paid (*literally given*) on demand" (Book I, v. CLXVI); and, "let no man lend (*literally give as a loan*) any thing to women, to slaves, or to children" (Book I, v. VIII). But in the phrase "give food to a twice-born man," and in similar expressions, the verb signifies gift alone: and that may be known from the epithet, *or circumstance*, descriptive of a moral purpose, not indicating sale and the like. From the insertion of surrendry or relinquishment *in the definition of gift*,

the phrase "he gives or leaves his estate to his sons," cannot be used when a father dies, or becomes an anchorite. Yet, if the father at the point of death, or becoming an anchorite, declares, "so much wealth is left by me, let it belong to my sons," it may in that case be said, he died, or became an anchorite, after giving or bequeathing all his property to his sons. Accordingly, in stating the etymology of *dāyabhāga* or inheritance, JĪMŪTAVĀHANA and others thus derive the word *dāya* heritage, that which is given or bequeathed (*dīyatē*). This, and the phrase "he gives or bequeaths," are figurative; for they are similar to the investiture of property in another, after cancelling the property of the former owner, who is deceased naturally or civilly: there is not in that case a surrendry made by the deceased and the rest. RAGHUNANDANA observes, there was not, on the part of the deceased, a surrendry effecting the annihilation of his own property, and consisting in his declared will, "this is no longer mine." The same author explains surrendry, declared will; and that signifies desire or intention*. All this has been stated in conformity with the opinion of VĀCHESPATI BHATTĀCHĀRYA.

It differs from the opinion of JĪMŪTAVĀHANA, in maintaining that the right to a chattel, which is given, is not vested before acceptance or approbation: this is deduced from minute reasoning; and the argument is equal. Consequently, assent is signified by the term approbation; as in the phrase, 'philosophers of the *naiyāyika* school acknowledge a supreme ruler different from the deities of mythology.' The phrase 'he accepts the chattel,' signifies, he assents to the property conferred on him by the donation, and does not neglect or refuse it. It may be also affirmed, that acceptance is a mode of acquisition through the medium of request; but, in the case of an unsolicited gain, there is no difficulty, even though acceptance be not considered as acquisition.

Granting this; may not a man appropriate at pleasure an offering made by any person on the bank of the Ganges, without a declared acceptance in this form, "this shall be mine," but merely thinking "this is mine?" What objection is there? Or, if objections be sought, the appropriation of an offering made by another,

* *Sankalpa*, thus explained as signifying will, seems also to be the nearest term for testament. But strictly, a last will and testament is unknown to the Hindu law. T.

ther, without previous acceptance, is indirectly forbidden by a text ; “ acceptance should be avoided on the bank *of the river*.” This has been sufficiently explained.

Property dependent on relation to the former owner, in that chattel of which the ownership has expired, is heritage, a word deviating from its etymon. So JÍMÚTAVÁHANA *defines heritage*. The condition, “ dependent on relation to the former owner,” obviates the possible use of the word heritage in *speaking of gift* and the like. That relation, originating from birth, study, marriage and so forth, is filiation, fellowship in study, conjugal union, or the like. The phrase “ of which the ownership has expired,” obviates the use of the term heritage, under the texts which describe the concurrent property of the wife during the life of her husband (CCCCXV &c.) SRÍ CRĪSHNA TERCÁLANCÁRA.

Since property resists concurrent property, how can a wife have any title to the estate of her living husband? The objection is ill founded ; for, acknowledging the death of a father and so forth to become severally causes of property immediately subsequent, he does not admit the *general* resistance of one property to another. But, according to that opinion, it may be affirmed that marriage would unavoidably resist a property which was different from that of such a wife, and which would annihilate her former property. VÁCHESPATI BHATTÁCHÁRYA does not admit a property then vested in the wife. This will be subsequently explained. According to his opinion, the words “ of which the ownership has expired,” need not be inserted.

Such is heritage (*dāya*) ; and of this a partition (*bhāga*), distribution, right, ownership or property, must be understood according to the various opinions, as already noticed : and the verb *bhaj*, divide, occurs in the text of YÁJNYAWALCYA (CXIV) with the sense of right or title. Accordingly MENU also expresses, “ learn the law of inheritance (*dāyabhāga*).” Having declared the simple right of succession (Ch. IX, v. CIV), and noticed cohabitation of *parceners* (from v. CV to v. CXI), he proceeds to the mention of partition (v. CXI). In those texts, “ after the death of the mother” (v. CIV), alludes to the several property of the mother : accordingly CULLÚCABHATTA remarks, on the expression “ paternal estate,” that sons also succeed to the maternal

estate. BAUDHĀYANA also simply declares the title of sons to succeed to the paternal estate (III).

JĪMŪTAVĀHANA remarks, that the casting of lots and the like, for the several rights of two or more sons to their respective portions, (which rights were *previously* unascertained, since nothing determined that such a chattel belonged to such a person ;) ascertains the severalty, *which may be expressed in these words*, "this wealth belongs to this man:" that ascertainment of severalty, namely the casting of lots or the like, is partition. But RAGHUNANDANA says, after the devesture of property predicated of the sons collectively, in respect of the collective wealth which devolves on them after the death of their father, property is severally predicated of each son in respect of each chattel, *as determined* by lots or the like: or the casting of lots, or other act which produces that consequence, is partition of heritage. JĪMŪTAVĀHANA conceives, that, after the decease of the father, and after the consequent devesture of his property, a right is vested in his sons, by reason of the connexion of filiation and so forth; and this follows from the text of BAUDHĀYANA. Since the property of the sons can only arise after the devesture of their father's property, such devesture *is necessarily inferred*: now there is no argument to prove the devesture of the co-ordinate property of sons, and rise of another *several* property; although the texts, which notice partition, do suggest that *several property*, it would be difficult to establish the failure of one property and rise of another: therefore the property of each is established in that which will become his by lot; for his right, being imperceptible to the senses, cannot be ascertained otherwise than by casting of lots: this alone constitutes partition. But RAGHUNANDANA thinks that the casting of lots must be explained by logical inference: as fire is ascertained from smoke by this argument, 'without fire there can be no smoke; for what else causes it?' so, without vested property there can be no casting of lots in the name of the proprietor, *for* there is no *other* proof of it. In the case of ordeal, as a natural efficacy is attributed to fire by this rule, 'fire burns the guilty alone, not the innocent;' so, attributing a natural efficacy to lots thrown, should it not be established, that the lot falls to each for that of which he had the property? No; for, *in the case of*
trial

trial by ordeal, the texts of Sages establish, that the innocent remain unhurt; but, in this instance, there are no grounds for the inference. If it may be said, that is established to avoid tedious difficulties, still it is again a tedious difficulty to prove such natural efficacy attributive to lots and the rest. In like manner, to obviate the property of all *the heirs* in the whole estate, (which might be supposed, since their connexion was equal when the father deceased,) it is most difficult to establish an impediment to such property, because that other individual property is previously negative*, or has not yet existed.

Again; it is universally agreed, that the acquirer shall have two shares, and any other heir one share, of what has been acquired by a brother employing one of two horses left by his father. On partition of the original wealth, should that horse fall by lot to him who acquired *this new wealth*, then, according to the opinion of those who contend for distributive property *severally vested in each individual during coparcenary*, that horse already belonged to the acquirer; why then should another brother participate in the wealth so acquired by him? But if the horse be obtained by a parcener other than the acquirer, the wealth so acquired ought to be equally divided; for it is gained by the exertion of one parcener, and by the labour of a horse belonging to the other. On this 'SRĪ CRĪSHNA TERCÁLANCÁRA remarks, that there is nothing inconsistent with practice, because the phrase "employment of common property," intends only wealth, of which the *several* property is undetermined. Of these two opinions, that which is maintained by RAGHUNANDANA, who contends for co-ordinate property, is confirmed by HERINÁT'HA, by the author of the *Mitácsharā*, by VÁCHESPATI MISRA, BHAVADÉVA and others. This very opinion is indirectly admitted even by 'SRĪ CRĪSHNA TERCÁLANCÁRA.

Should any one brother sell the female slave on a day which falls within his allotment (CCCLXVI 5), may the purchaser afterwards require the labour of that slave on the days allotted to other brothers? To this question the answer is, when a sale is

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made

* *Prágabhāva*: antecedent privation. Privation is relative or absolute; the last is of three sorts: antecedent privation, affirmed of what has not yet been; annihilation, affirmed of what has ceased to be; utter privation, affirmed of that which now is not, and in which past or future existence is not considered. T.

made, the purchaser has a property similar to that which the vender enjoyed : hence, the purchaser can only obtain *the labour of the slave* on those days of each month which were allotted to the vender in proportion to his share. Accordingly, when a principality is sold, the prince has property entitling him to receive revenue ; but the property of the occupant, entitling him to enjoy the produce *of the land*, subsists in full force : when the produce is sold by the occupant, the purchaser acquires a right to enjoy it, but the king retains his title to receive revenue. Hence, he who cultivates land for which he pays revenue to the king, and who enjoys the produce obtained from that land, is acknowledged to possess property as cultivator *of the soil* ; if he sell the land, the purchaser acquires similar property, in right of which he enjoys the produce after paying revenue to the king. The cultivator is not destitute of ownership ; for that would be inconsistent with practice. Consequently, various concurrent rights to one and the same thing being admitted, it must be established, that property is an impediment to other property of the same nature. This has been also stated by 'SRÍ CRISHNA TER-CÁLANCARÁ, in these words ; 'for those two concurrent rights of the same nature are incompatible.'

ART. II. — *On Succession of Sons.*

III.

BAUDHÁYANA :—Male issue by males *as far as the third degree* being left, the estate of the father surely must go to them*.

This text of BAUDHÁYANA propounds the succession of sons to their father's estate : and that succession only takes place after their father's demise ; for MENU declares, that sons may divide the paternal estate after the death of the father.

IV.

* See the context at V. CCCXCVII.

IV.

MENU :—After the death of the father and the mother, the brothers, being assembled, may divide among themselves, in equal shares, the paternal and maternal estate; but they have no power over it while their parents live, *unless the father choose to distribute it.*

Here their title is equal; that is, a deduction of a twentieth part or the like is allowed by other brothers, through affection, and to preserve due respect, because elder brothers and the rest are venerable. CHANDÉSWARA, CULLÚCABHATTA, VÁCHESPATI MISRA, JÍMÚTAVAHANA, RAGHUNANDANA and the rest observe, ‘by the term “divide” partition is intended; from ordaining partition after the death of the father, it follows that ownership vests after his death, else why should they not divide *the estate* earlier?’ Equal partition is here mentioned, supposing an eldest brother who is deficient in virtue, or who does not claim a deduction; for, the deduction of a twentieth part concerns an eldest brother endued with virtue, or intends an eldest brother claiming that deduction. Such is their meaning. UDAYACARA remarks, on the word ‘equal,’ that an equal partition should be made, after first deducting a twentieth part *for the eldest brother*. HELAYUDHA and the *Párijāta* read *saba*, with, instead of *samam*, equal; and “with” is expounded in the *Párijāta*, mutually, or among themselves.

“Paternal,” or parental; this derivative, from a term expressive of both father and mother, (the last being understood,) signifies paternal and maternal. It is so expounded by HELAYUDHA, CHANDÉSWARA, VÁCHESPATI, BHAVADÉVA, and others; and CULLÚCABHATTA entertains the same notion. A distinction in regard to the succession of sons to their mother’s property will be subsequently mentioned. ‘Others, says CHANDÉSWARA, consider “paternal,” or parental, as also signifying definitively what descends from a paternal grandfather; for partition is also suggested in that case’ (CCCLXVIII). We hold, that,

as

as “distribution of the paternal estate instituted by sons” (I), is merely illustrative of any relation, so are the terms of the present text (IV), “after the death of the father and the mother,” and, “the paternal estate:” consequently, it is only after the death of him whose estate may be divided as heritage, that partition is made. Such is the meaning of the text. But JÍMÚTAVÁHANA, RAGHUNANDANA, and others, argue, from the expression “*after the death of the mother*,” that ‘partition among sons, while their mother lives, is immoral; as is intimated by the text of SANC’HA and LIC’HITA (XVII).’ They consider the text of SANC’HA as signifying, that, since sons are not their own masters while their mother lives, a partition ought not to be made without her consent, for she is most venerable; and the text of MENU must be also adduced for the same purpose. Here some lawyers infer, from the phrase “they have no power over it while their parents live,” that they have a title in the estate while the father lives, but cannot appropriate it at pleasure without his command. But JÍMÚTAVÁHANA has said, ‘there is no proof of property then vested in sons.’ DÉVALA expressly declares it :

V.

DÉVALA :—After the death of the father, sons may divide his estate; but they have not ownership, or *full dominion*, while a faultless father lives.

By the mention of faultless it is intimated, that, should a blameable father be living, sons have ownership of his estate: it follows, that property is divested through faults. The very same exposition is delivered by RAGHUNANDANA and others. NÁREDA may be quoted in answer to the question, what defect?

VI.

NÁREDA :—The father being degraded, or become an anchoret, or having resigned, or deceasing naturally, his sons may divide his estate.

“Degraded;”

“ Degraded ;” fallen *from his class*. RAGHUNANDANA.
Consequently, even degradation is suggested by the word defect.

“ Become an anchorite ;” quitting the order of a housekeeper.
“ Having resigned ;” though his title subsist, having no wish to retain the property vested in him. RAGHUNANDANA.

For this shows that sons have property in their father’s estate, through his resignation or the like. JÍMÚTAVÁHANA.

But CHANDESWARA explains the term, ‘ void of desire for worldly concerns.’ He reads the text *nivṛittē vāpi ramaṇē pitary-uparata-sprīhē**, instead of *vinaśhité vāpy-aśaranē pitary-uparata-sprīhē* ; and expounds that reading ‘ capable of connubial intercourse, but refraining from it.’ MISRA delivers a similar exposition. HELÁYUDHA reads *nivṛittē vāpi maraṇāt* : that has been expounded by JÍMÚTAVÁHANA as an epithet of the subsequent term, ‘ exempt from disease, (that is, alive,) but resigning.’ Another reading is approved by the author of the *Pracāśa*, but is not noticed by JÍMÚTAVÁHANA. In his opinion, the divestiture of the father’s property, in the case of resignation, is expressly declared. According to CHANDESWARA and others, the same must be deduced *from the premises*. But, according to RAGHUNANDANA, the right subsists even in the case of one who ceases to desire property.

There is a cessation or failure (*uparama*) of affection (*sprīha*) or desire for worldly concerns. Now that occurs continually, for the duration of wish or desire is limited to two moments ; it must therefore be affirmed to be the cessation of final desire. Such being the case, a father has at first withdrawn from *temporal* concerns ; and having thus resigned *worldly* affairs, he afterwards again desires *temporal* concerns : in such a case, is the father’s resignation *irrevocable* ? In answer to this question, the same author observes, that property being divested through abdication, cannot be revived by subsequent desire. He thus defines a resignation adapted to this purpose : ‘ annihilation of desire, not contemporary with antecedent privation of *any* desire contemporary with property, is resignation.’ Consequently, so many wishes as passed previous to abdication, as well as antecedent privation

* With this reading it forms the last hemistich of the text subsequently cited (XCVIII).

privation of future wishes, were contemporary with property; for the right was not divested, since it had not been then abdicated: the wish which is not contemporary with such antecedent privation, is the last of wishes anterior to abdication; the cessation of that is resignation: and in like manner, no wish is again formed in the interval which follows such final wish for worldly concerns; abdication takes place thereafter: whether desire will or will not be subsequently revived, partition may be made by sons when such desire has *once* ceased. Thus some explain RAGHUNANDANA's meaning.

That is not *tenable*; for sons cannot make a partition of their own accord while the father's right of property subsists: having resigned, and withdrawn from worldly concerns, he forms no wish of partition; the distribution cannot be that which is made by the father; and, without abdication, it cannot be known that the last wish for worldly concerns has been formed. In fact, resignation annuls property, and it is ultimately the same with abdication; for the cessation of wish for worldly concerns, accompanied by a declaration in this form, "henceforward I will not act in *worldly* affairs," annuls the right of property: afterwards, when four years have elapsed, if he again desire worldly concerns, still property is not revived. Again; since there is antecedent privation of that wish which will be formed after the lapse of four years, the epithet "contemporary with property," has been subjoined to deduce resignation from the cessation of desire contemporary with that declaration. Again; since the failure of property takes place at a moment subsequent to the cessation of desire contemporary with that declaration, it is said; "even though the property subsist," to authorize partition at the moment when desire ceases. This some allege: but it is unsatisfactory, for it is liable to the same objection. Hence the opinion of JIMUTAVAHANA and the rest seems accurate. "Having resigned," explained as signifying void of wish for the use of women, corresponds with the text, "when their mother is too aged to bear more sons" (XX), even though the *present* text be not read *nivṛttē vāpi ramanē*, or refraining from amorous delights.

However, some lawyers think partition among sons authorized by law, even though the father's title subsist, when it is any-how

known that the wish for worldly concerns has utterly ceased. But the father's property does then subsist, since he has not abdicated by a declaration in this form "it shall no longer be mine," nor has deceased, or otherwise vacated his estate. Let it not be objected, that no partition could be made while the father's property subsisted. The law has authorized partition even in the case of one who ceases to desire property; and by that term is signified the utter failure of *such* wish. But if the owner, having entertained no wish during a certain space of time, afterwards desires worldly concerns, there was no resignation. After withdrawing his affection *from things of this world*, if he abdicate his estate in this form "let this be no longer mine," then indeed property is divested by abdication: and afterwards, even though *temporal* inclinations revive, property is not renewed. With this view it is said, "contemporary with property." The resignation can only be known from the declaration of the party. Thus the opinion of RAGHUNANDANA is justified. Abdication is comprehended in the text, by considering the terms as illustrative of a general sense; or included under the term "anchoret," explained in the same manner in which the text of HÁRITA (XXIII) is expounded by the author of the *Pracāśa*; living on the wealth and under the rule of his sons, without becoming a recluse according to the *Vēda*.

In the case of degradation, forfeiture of property must be understood when the offender is averse from expiation; for the gift of their whole estate is recorded as an expiation for degraded persons. RAGHUNANDANA, ŚRĪ CRĪSHNA TERCÁLANCÁRA, and others.

But VÁCHESPATI BHATTÁCHÁRYA holds, that a degraded man, and an anchoret, only forfeit property previously vested in them; else the laws which forbid the receipt of presents from a degraded man, and which show the succession of heirs to the estate of a (*sannyāsi*) or devotee in the fourth order, would have no authority. Again; the right to former wealth being forfeited, even though he be not averse from expiation, that expiation may be nevertheless accomplished with money subsequently begged from sons or others; and it cannot therefore be said that the expiation can no otherwise be accomplished.

Here it should be noticed, that, if the property of a degraded man

man be divested, even though he be desirous of expiation, he does not, after performing penance, become owner of wealth, his right to which was forfeited at the moment of degradation: for there is no argument to prove ownership then *revived*; and to hold it admissible, would contradict approved usage. Consequently, *even* in the case of aversion from penance, degradation is the *sole* cause of forfeiting property which was vested before the loss of rank; and this is founded on the inconsistency with approved usage, *which is objected to the contrary inference*. In the case of a recluse likewise, abdication solely annuls property: retirement cannot be established as an independent cause of annulling it. “Or the father deceasing naturally, his sons may divide his estate” (VI): by mentioning partition among sons after the natural decease of the father, it is cursorily intimated by NÁREDA, that property is immediately vested in them.

VII.

SANC’HA and LIC’HITA:—Since partition of the estate takes place after his decease, sons cannot divide it while the father lives, even though it were acquired by them independent of him; they have no power *to make such a partition*, since they are not their own masters in respect of wealth or religious duties.

“After his decease;” after the death of the father. “Partition;” division of heritage. The word “only” cannot be here supplied; since partition is seen *in practice*, even while the father is living, by his choice: may sons therefore divide the estate while the father lives? The Sage replies, “sons cannot divide the estate while the father lives:” they cannot then divide it without his consent. But some expound the text, *by completing the cause assigned*; ‘since sons are only entitled to the heritage when their father is deceased, therefore they shall not divide the estate while he lives.’ “Acquired independently of him:” this is explained in the *Retnācara*, ‘acquired by united efforts in science or the like,

like, independently of the father.' The meaning is, that the term suggests this sense; 'acquired by them independent of their father.' To satisfy the question, how can any thing be acquired independently of him? the commentator adds, by united efforts in science or the like. Yet the same must also be admitted without united efforts: we cannot determine what is the use of this insertion.

VIII.

HĀRĪTA:—While the father lives, sons are not independent in respect of the receipt, alienation, and recovery of wealth; but if he be prodigal, absent in a remote country, or afflicted with disease, let the eldest son manage the affairs.

“Receipt of wealth;” taking common property without reference to the father. The *Pārijāta* expounds it ‘acquisition.’ Consequently, without the assent of his father, a son should not do any act for the acquisition of wealth. He is therefore not independent in respect of property then acquired: that is, the present text has the same import with the text above cited. “Alienation;” gift. “Recovery;” obtaining money from the hands of a debtor. In respect of these things, sons are not independent; they are not capable of acting without their father’s assent. “Prodigal;” giving *money* away for his own pleasure only; disposed to make gifts on the sole suggestion of his own will, without attending to the gain or loss of merit and riches. ‘If the father be such’ must be supplied in the text. Such is the exposition approved by CHANDÉSWARA. The mention of management intrusted to the eldest son when the father is prodigal, shows his superior authority above the rest in respect of their affairs: no other can oppose the owner of wealth who gives it away at his own pleasure. Yet, it must not be supposed that the eldest son’s management only is ordained, not opposition to prodigal waste. Since management intrusted to the eldest son, being mentioned, shows that the father is deprived of the management, it follows that the father has not the effects in his power. The author of the *Pracāśa* reads *cāman dīnē*, instead of *cāmadānē*; and explains

explains it, 'solely by the choice of the father, if he be despondent.' This reading is noticed by JÍMÚTAVAHANA.

It appears from the text of HÁRÍTA, that if the father be living, but any-how disqualified for business, the eldest son has a right to manage the affairs. MENU *also* declares, that the eldest son alone shall conduct the affairs like a father, although the title of all the brethren to that estate be equal.

IX.

MENU:—The eldest brother may take entire possession of the patrimony; and the others may live under him, as *they lived* under their father, *unless they choose to be separated*.

Having premised that "*brothers may divide the paternal estate after the death of the father and the mother,*" *he proceeds* to declare, that "the eldest brother may take entire possession of the patrimony;" that is, the eldest endued with all the most eminent virtues, shall have power, like a father, over the inheritable patrimony. The Retnácara.

Consequently, the title of the eldest son alone to possess the whole estate after the father's decease, is propounded. Since the preceding text (IV) had shown the succession of several sons, the others must live under him, receiving food and vesture. This must be supplied in the text. Hence his younger brothers should incur no expence whatsoever without his consent.

"The others may live under him;" that is, they should so behave as they are guided by his conduct. The Retnácara.

This is a rule for parceners living together. If all the sons have an equal title to the patrimony, why should the eldest son alone exercise authority over it? To this question the same legislator replies;

X.

MENU:—By the eldest, at the moment of his birth, the father, having begotten a son, discharges his
debt

debt to his own progenitors; the eldest son, therefore, ought, *before partition*, to manage the whole patrimony:

2. That son alone, by whose birth he discharges his debt, and through whom he obtains immortality, was begotten from a sense of duty: all the rest are considered by the wife as begotten from love of pleasure.

“Having begotten a son;” being relieved from the evil attendant on the want of male issue: and that evil is suggested by the scripture, which declares, that a blissful region is not attained if male issue be wanting; that is, a place of purity is missed.

CULLÚCABHATTA.

Accordingly it is mentioned in the *Mahābhārata*, towards the end of the first book, that the ingress of the sage MANDAPĀLA into a region of purity was prevented by the want of male issue; for the same poem shews that the debt to his progenitors, undischarged, is the ground on which a man is excluded from the blissful region, even though his conduct have been virtuous. In this case it therefore appears, that the debt to progenitors is discharged when a son is begotten. The Sage expressly declares it; “by the eldest, at the moment of his birth, the father discharges his debt to his own progenitors.” By these terms, “at the moment of his birth,” it is intimated, that the son’s performance of rites ordained by the *Vēda*, and his sacraments and the like, are not requisite to this effect. Accordingly, should the son die immediately after birth, still his father is exonerated from debt to his progenitors. The scripture shows, that the debt continues while no son is born, and is discharged by the birth of a son. For this reason he ought to take entire possession of the patrimony. But this is mere commendation of the eldest son, not in effect declaring his property in the whole estate; for a former text propounds the equal title of all sons. Since the authority of one son over all the rest must be established, that commendation is a ground of selection, and an argument whereby the authority of the eldest son alone is established. “The eldest son was begotten from a sense of duty;” he produces merit whereby bliss in a region of felicity is

attained. By this phrase, the Sage again celebrates an eldest son, by whose birth the father discharges his debt, or on whom he devolves the load of debt, and through whom he obtains immortality, or perpetual delight, because he is relieved from debt. But some remark, that immortality is obtained through a grandson, as declared in the following text, which is thus expounded by CULLÚCABHATTA: 'by a son a man conquers all worlds, the celestial abode and the rest; through a son's son he remains there long:' consequently this sense is suggested, "through the eldest son of his eldest son he obtains an endless abode."

XI.

MENU:—By a son, a man obtains victory over all people; by a son's son, he enjoys immortality; and, afterwards, by the son of that grandson, he reaches the solar abode.

CULLÚCABHATTA has expounded "obtain immortality," become exempt from death; and has quoted the authority of the *Vēda*. In this text (X 2) the devolving of the debt on the eldest son is mentioned as a cause which produces merit, whereby the gates of a blissful region are opened to the father. Hence there is no vain repetition. "The rest are considered by Sages as begotten from love of pleasure;" as procreated by one who embraces a woman *solely* for the enjoyment of pleasure. This is merely figurative; for a text expresses, "many sons are to be desired, that some one of them may go to *Gayā*."

That being the case, should the eldest son, by force or artifice, take the whole estate, would there be no offence? Not so; for the same Sage thus proceeds:

XII.

MENU:—As a father should support his sons, so let the first-born *support* his younger brothers*; and let

* Chap. IX, v. 108. The difference in translation is slight. Sir W. J. must have read *pitaiṛva*, instead of *pitēva*.

let them behave to the eldest, according to law, as children *should behave* to their father.

Let the first-born support his younger brothers, in like manner as a father should support his sons ; let him not defraud them : and let them behave to him as sons ; and not bear him malice.

XIII.

MENU :—The first-born, *if virtuous*, exalts the family ; or, *if vitious*, destroys it : the first-born is in this world the most respectable ; and the good never treat him with disdain.

He exalts the family by proper acts ; if the younger brothers be supported, the family is exalted : or he destroys it *by misconduct* ; this is merely a *supposed* possibility. The *Retnâcara*.

It is merely a supposed possibility ; for, though unsupported *by him*, if they are by any *other* means maintained, the family cannot be destroyed. But CULLÚCABHATTA thus comments on the text : ‘ in whatever path of vice or virtue the eldest brother walks, that same path do his younger brothers follow ; by virtuous proceeding the family is exalted, by vitious proceeding it is destroyed : and the virtuous first-born is most respectable in this world, and never slighted by the wise.’

XIV.

MENU :—If an elder brother act as an elder brother ought, he is *to be revered* as a mother, as a father ; and even if he have not the behaviour of a good elder brother, he should be respected as a *maternal uncle or other* kinsman.

“ As a mother :” by thus mentioning his parity with a mother, it is intimated, that the first-born may take possession of the maternal estate. In like manner, even in other cases of estates left

by relatives, *the eldest brother may take entire possession.* This observation of some lawyers is questionable. “The behaviour of a good elder brother” consists in the support of his brethren and the rest. Even though he neglect that, he should be revered, but *only* as a kinsman, such as a maternal uncle and the rest: obedience to his commands is not required.

XVI.

Let not an elder brother present ornaments to his wife, without giving *due maintenance* to his younger brothers.

Literally, a nuptial present; expounded by HELAYUDHA, ornaments of a wife and the like.

XVI.

NÁREDA:—Let the eldest brother support, like a father, all the others, who are willing *to live together without a partition*; or even the youngest brother, *if all assent*, and if he be capable of business: capacity for business is the best rule in a family.

But if the eldest son be incapable, and the middlemost, or another, be capable of business, he alone has authority over the whole patrimony; for he is able to support the rest. Thus the Sage adds, “capacity for business is the best rule in a family;” *the best rule* regards capacity for business, or ability to support *the family*. Consequently, seniority by age is not an indispensable requisite. If the management of the whole patrimony go with capacity alone, is not the commendation of the first-born, as delivered by MENU, improper in this place? *This may be answered by asking*, is the management of the whole patrimony conferred by such commendation alone? for support is also ordained (XII). Consequently, if two sons, or all the sons, be capable of business,

to show that *in that case* the first-born alone shall have the management of the whole estate, although another son be also capable of supporting *the parceners*, the commendation of the first-born has been pronounced.

XVII.

SANC'HA and LIC'HITA :—Should the father be incapable, let the first-born manage the affairs; or the next son experienced in business, if the father assent. Not without the father's consent, can a partition of the property be made. If he be old, if his faculties be impaired, or if he be afflicted with a chronick disorder, let the eldest son, like a father, protect the property of the rest; truly the *support* of the family depends on the patrimony: sons who have parents living are not independent, nor even *after the death of their father* while their mother lives.

“The next;” the middlemost; or, should he also be incapable of business, the son born after him: such is the order. “If he assent to it,” is expounded in the *Retnâcara*, with the approbation of the eldest son: we explain it, with the consent of the father. Thus the trust of supporting the family is mentioned as devolving on the first-born and the rest successively; the care of the property, when the father becomes old or the like, is subsequently mentioned: there is, consequently, no vain repetition. Here also seniority is not invariably required; but he alone who is experienced in affairs should take care of the property. In naming the eldest, it is supposed that every brother, or the eldest at least, is experienced in business. Consequently, as the eldest, the next born, or the youngest, should support the family and protect the property while the father is living, *but disqualified*, so should the same be also affirmed after his decease. The first-born is here supposed to be living, for the text mentions “the next son:” by this term (*anantara*) is signified one born immediately

diately after him ; else it would have been said, another brother. The commendation of the first-born, as delivered by MENU, supposes him to be living.

“ If his faculties be impaired ” (XVII) ; if his intellect be disturbed by *vitiated* air or the like. The *Retnâcara*.

The Sage mentions a reason for the indispensable necessity of protecting the property through the eldest or other son, when *the father* himself is incapable ; “ the support of the family depends on the patrimony.”

“ Sons are not independent ;” they have no power to aliene *property* by gift or the like. They are also not independent while their mother lives, and is virtuous. The *Retnâcara*.

Without her consent, they have no power to aliene *property* by gift or the like. Since the mother has no property in the estate after the father's decease, sons alone could have aliened it by gift or the like. This text is delivered as an argument, by way of example. Consequently, such is the mode in which sons should live together after their father's decease : and that is only *enjoined*, if all consent ; else a partition must be made.

XVIII.

MENU : — Either let them thus live together, or, if they desire *separately to perform* religious rites, let them live apart ; since religious duties are multiplied in separate houses, their separation is therefore legal, *and even laudable*.

“ Thus *live together* :” although their title to the patrimony be equal, the rest should appoint any one brother, the first-born, or another, to govern the whole ; they should conduct themselves with proper behaviour, according to his directions : let them thus live together. Or, if they desire to multiply religious duties, let them live apart. We shall comment on this text in the chapter on Partition made by Sons.

XIX.

SANC'HA and LIC'HITA:—Willingly let them live together; by union they exhibit thrift.

By their union, that is, by their mutual assistance, they exhibit or display thrift; that is, they thrive. The *Retnácara*.

SECT. II.—*On the Portion of an Elder Son, in a Partition made by a Father.*

Since the text of SANC'HA and LIC'HITA (XVII) shows that partition may not be made without the father's consent, it appears that partition should be made if the father choose to divide the estate. Hence partition among sons, even though their father be living, does take place, but founded solely on the father's choice.

XX.

GÓTAMA:—After the death of the father, the sons may divide his estate; or while the father lives, if he choose to divide it, and if their mother *or any other wife* be too aged to bear more sons.

“After the death of the father, the sons may divide his estate:” this intends partition made by sons. That title will be discussed*.
 “If their mother be too aged to bear more sons:” this supposes an estate inherited from the paternal grandfather.

JÍMÚTAVÁHANA, RAGHUNANDANA, and others.

That shall also be hereafter explained. The text must be supplied; “while *the father* lives,” and “if he choose *to divide it*.”

XXI.

SANC'HA and LIC'HITA :—While the father lives, the estate may be divided, with his consent, openly, *in the presence of arbitrators*, or privately, *by a mutual adjustment*, according to law.

“ With his consent ;” with the consent of the father.

CHANDÉSWARA and others, Consequently the two legislators expressly declare, that, while the father lives, the estate can only be divided with his consent. “ Openly ;” that is, in the presence of arbitrators. “ Privately ;” without the intervention of arbitrators, by a mutual adjustment only, but according to law.

XXII.

BAUDHÁYANA :—With the father's assent, a partition of heritage may be made.

Wherefore should a father, who lives happily with sons and the rest, desire partition ? To this HÁRÍTA replies :

XXIII.

HÁRÍTA :—A father, making a complete partition even during his life, may either go to the forest *as a hermit*, or enter at once into the *fourth* order, *or that* of an anchorite ; or he may divide a small part of his fortune *among his sons*, and remain in his house, keeping the greater part of it, *but without concealing any portion of his wealth* : should he lose, *by some calamity*, what he reserved, he may take back from them, for his maintenance, what

what he gave ; but he must *give a portion to sons* reduced to indigence.

“ May go to the forest ;” may enter into another order. The author of the *Pracāśa* explains the subsequent term (*literally* “ the order suitable to an aged man ”) ‘ living on the wealth and under the rule of his sons, without becoming a recluse, according to the *Vēda**.’ HELĀYUDHA and the *Pārijāta* expound the term as signifying the fourth order : in their opinion the preceding term, “ go to the forest,” is restricted to the hermit *or third order*. But in fact, as is observed in the *Retnācara*, the disjunctive particle being indeterminate, other legal forms of *retirement*, besides the seclusion of a hermit, or of an aged man *abiding in the house of his son*, do also occur. Hence a father may *also* retire to the bank of the Ganges, or other holy place, subsisting on alms or the like. Intending to enter into another order, a father reflects, “ when I am no longer present, my sons, contending for wealth, will be ruined by mutual injuries ; I must therefore divide the estate amongst them.” This and other *occasions* may be understood. But when a father, wearied by the mutual contests of his sons in regard to the fruition of the estate, divides the estate among them and resides at home, determining, “ I will live apart, reserving a sufficient portion for myself ;” then the legislator says, “ he may divide a small part of his fortune.” Consequently he may divide an inconsiderable part among his sons, and they may gain other property and support themselves : but the father, being old, and of course unable to labour, may reserve a considerable sum sufficient for his own support and for religious purposes, and may *thus* reside at home. However, he must practise no fraud. But if, in consequence of any accident, his wants cannot be supplied out of the property reserved, however considerable it might have been, then the law-giver declares, “ should he lose what he reserved, he may take back from them, namely from his sons, what he gave.” The reason is, that no duty is more strictly incumbent on sons and the rest, than veneration of parents : and if the purpose cannot be fulfilled even with the whole of the wealth acquired *and distributed* by the father, they must even give wealth acquired by themselves.

* See MENU, Chap. VII, V. 86 and 94.

themselves. "But he must portion sons reduced to indigence:" if any of his sons be incapable *of maintaining themselves*, he must support them out of his own property *which he reserved*.

XXIV.

NÁREDA:—Or even the father, being advanced in years, may himself divide the estate among his sons, giving to the first-born the best portion, or in any mode which he shall choose.

The particle "or" denotes an alternative; either the father or the sons may divide the estate. Consequently the sense is, when the father has reached old age, his sons may make the partition with his consent. Or this other case may be the partition, which is made after the death of a father. "Being advanced in years;" at any period in the second or third stages of life, and so forth*: such is the sense. Accordingly GÓTAMA ordains a *second* partition when a son is born after partition has been made. "The best portion;" a greater portion; the deduction of a twentieth part ordained by MENU, or other suitable portion. The same should be also understood in respect of the middlemost and the rest. This concerns eldest sons and the rest endued with virtuous qualities. The very same exposition is delivered by RAGHUNANDANA and others. CHANDÉSWARA explains "best" most excellent, greatest. The form of a deduction equal to the twentieth part of the estate will be explained. "Or in any mode which he shall choose:" he may reserve any part he chooses, or give more to any one of his sons, and less to another.

XXV.

VISHNU:—If a father make a partition between himself and his sons, he may give or reserve, at his pleasure, any part of his own acquired wealth; but over *landed* property left by a paternal grandfather,

* Infancy is the first stage; the close of life is the fourth. T,

father, the father and the sons have equal dominion.

This concerns wealth acquired by the father without using the patrimony which had descended from his own father.

CHANDÉSWARA,

What has been acquired without adventuring the patrimony, a father has power to distribute in equal or unequal shares.

MISRA,

And that is reasonable ; *for*, what is gained on the adventure of property left by his father, being considered as an acquisition of his father, by means of that property *adventured*, is deemed a *part of* his patrimony. *But* it may be objected, that, if a man recover, by his own labour, the property of his grandfather, which had been seized by a stranger, it is treated as property acquired by himself ; yet wealth gained by his own skill and labour, with the use of an inconsiderable portion of the wealth left by the grandfather, is considered as a part of the patrimony descending from the grandfather : this appears unequal,

XXVI.

YÁJNYAWALCYA :—If the father make a partition among his sons, he may give, at his pleasure, *more to some and less to others*, or give the first-born the portion of an eldest son, or divide the estate among all of them in equal shares.

This text declares three cases : 1st, At his pleasure, he may give more to some and less to others ; 2dly, He may give the first-born the portion of an eldest son ; 3dly, He may give equal shares to all his sons. Unequal distribution is not prohibited in the case of partition made by the father, as it is in that of partition made by sons : to declare this, and other points, another text will be delivered. There is consequently no vain repetition. Some remark, that partition cannot be made at the option of sons, since they have no property *in the estate* while the father lives. Hence, as is observed in the *Dīpācalicā*, the term “ at his pleasure ” denotes,

notes, that the distribution should be made at the pleasure of the father, not of the sons. The same legislator propounds unequal distribution in another text (XXXIII) : hence both opinions may be received under the ambiguous sense of the phrase, since other Sages propound both *rules*. In none of the three cases is the distribution *made* at the pleasure of sons ; and the reason of that is their want of ownership. This, however, concerns wealth acquired by the father himself ; for a different rule will be propounded (XCII) in respect of property descending from the grandfather. Such is the opinion intimated in the *Retnâcara*.

Although a father have power to give, at his pleasure, more to some and less to others, when he distributes wealth acquired by himself, still an unequal distribution must not be made through partiality, resentment, or the like.

XXVII.

CĀTYĀYANA :—If a father, during his life, divide the property, he shall not prefer one of his sons, nor exclude one of them from a share, without a sufficient cause.

“ Without a sufficient cause,” such as duty and piety, a large family to maintain, or inability *to earn his livelihood* and the like (as explained on the concurrent opinions of JĪMŪTAVĀHANA and the rest), he shall not prefer one son, or distinguish him by assigning to him a larger portion ; nor shall he exclude one of his sons from a share, or disinherit him, without a sufficient legal cause of exclusion, such as degradation and the like, or spontaneous relinquishment of his share. In like manner, he should not give to the eldest a deduction equal to a twentieth part *of the estate* or the like, without a sufficient cause, namely the virtues required. Consequently, if there be a sufficient cause, he may give a greater portion to one of his sons, a deduction of a twentieth part and so forth to the first-born and the rest, and no share to an eunuch, an outcast, or the like. But if he do give a greater portion to one son, through partiality, because he was born of a favourite wife, and give less or none to another son through resentment, or give
the

the portion of an eldest son to his first-born, though destitute of virtue, that distribution is invalid.

XXVIII.

NÁREDA :—A father has no power, if his intellect be disturbed by sickness, or his mind agitated by wrath, or his affection partially set on the son of a favourite wife, to make a partition different from the law of *inheritance*.

A father, acting in a mode not conformable with law, through delusion arising from acute disease, in which air or other *constitutional element is depraved*, or through delusion arising from wrath, or through the influence of excessive partiality on his mind, from love or the like, has no power to make an *irregular* partition. His want of power consists in this : whatever distribution is *thus* made by him is void, because it is made by one who is disqualified ; as the ceremonies ordained to be performed at twilight *are fruitless*, when performed by a man of the servile class, *because he is disqualified*. Accordingly VACHESPATI BHATTACHÁRYA observes, on the text of NÁREDA, that the phrase “a father has no power” shows, that, if sickness or the like be the cause, unequal partition, even though made by the father or other owner, and even though the wealth were acquired by himself, is invalid, like an act done without ownership. “A partition different from the law,” here signifies a partition in which more is given to one, and less to another, deviating from the law which propounds the portion of an eldest son and the rest. The particle connects the act with the several circumstances enumerated in the first hemistich, “if his intellect be disturbed by sickness, &c.” However, since CÁTYÁYANA declares a reserve, “without a sufficient cause” (XXVII), unequal partition made by the father, and refusal of partition, in respect of property acquired by himself, which are declared by VISHNU and many other Sages to depend on his pleasure, are legal, according as there is or is not a sufficient justifiable cause of partiality in the mind of one whose intellect is undisturbed, as regularly happens among good men ; (such

(such are duty and piety, a large family to maintain, inability to earn a livelihood, and so forth ;) or a sufficient cause for excluding one son from a share, such as degradation and the like : the partition is valid, because there is no impediment, such as sickness and the rest mentioned by NÁREDA.

Since it is declared that the ruler of the family has no power to make such a partition, the object of that proposition is to show the subject of the epithets or accidents, "making a partition different from the law," "if his mind be disturbed by sickness, &c." Here the deviation from the law is the cause which invalidates the partition. The accident or epithet, "whose intellect is disturbed by sickness," as well as the rest, is both characteristick and causal. If he act contrary to the law through partiality, he is deprived of power : this is characteristick. Why should he act contrary to law ? Because his intellect is disturbed by sickness : this consequently is a causal description. ' Deviating from the law, which propounds the portion of an eldest son * : ' therefore, an allotment of a greater portion, arising from the deduction of a twentieth part or the like, does not constitute a partition different from the law of inheritance.

The text of YÁJNYAWALCYA (Book II, Chap. IV, v. 58) is explicit. Since the eighteen titles of administrative law are comprehended under the term "contract" (*vyavahāra*), partition of heritage by a person so circumstanced is also null ; for MENU likewise applies the same term to inheritance, "these eighteen titles of law are settled as the ground-work of all judicial procedure (*vyavahāra*) in this world" (Book II, Chap. I, v. 2). In this place also, the term (*vyavahāra*) signifies title of jurisprudence, or act cognizable in courts of justice.

"Intoxicated† ;" *inebriated* with wine or the like. "Insane ;" through the depravation of constitutional elements, as air or the like. "Grievously disordered ;" afflicted with severe illness. "Disabled ;" disqualified, being addicted to gaming or the like. "Infant ;" under the age of sixteen years. "Agitated by fear ;" impelled

* See the definition of illegal partition in the preceding paragraph.

† That a reference may be unnecessary, I subjoin the text. A contract made by a person intoxicated, or insane, or grievously disordered, or disabled, by an infant, or by a man agitated by fear or the like, or in the name of another by a person without authority, is utterly null. Book II, Chap. IV, v. 58. T.

impelled by dread of punishment and the like. "Without authority;" unauthorized by the owner. Gratuitous gifts and the like made by these are invalid. In six cases mentioned, from inebriation to fear, the reason of *invalidating the contract* is the perturbation of mind. But, as RAGHUNANDANA observes, a man wholly dependent, a slave, a son and the rest, are comprehended under the term "and the like:" and that observation is just.

VÁCHESPATI BHATTÁCHÁRYA.

Here the expression "gaming or the like," comprehends lust and other passions; for the word, which occurs in the text (*vya-sana*) is explained, 'danger or calamity, degradation, and vice proceeding from lust or wrath.' Consequently the sense is this: as the worship of deities, performed during impurity, is productive of no merit, so does the volition of one insane, wrathful, or the like, who intends to make a gift, produce no divestiture of former property; for, as a pure *worshipper* is alone qualified for one act, so is a wrathless man or the like for the other. Consequently, since the distribution made by him is null, partition must be made afresh. However, should he not give a deduction of a twentieth part and so forth to a virtuous eldest son and the rest, the partition is not therefore invalid; for the allotment of a twentieth part and the like is founded *only* on piety and other merits, and equal partition is also propounded by the law: and if he do allot a suitable portion, including a deduction of a twentieth part and so forth, to his eldest son and the rest, the partition is not different from the law of *inheritance*; for the law assents to a deduction of a twentieth part and the like. This brief statement may suffice. The disabilities, which are comprehended under "degradation, &c.;" will be explained in the chapter on Exclusion from Inheritance.

XXIX.

MENU:—If, among undivided brethren *living* with their father, there be a common exertion for common gain, the father shall never make an unequal division among them, *when they divide their families*.

If

If sons unanimously demand partition, the father shall not make an unequal partition on account of *filial* piety or the like; but he may give a deduction of a twentieth part and so forth to his eldest son and the rest; for that is not considered as a share.

JÍMÚTAVÁHANA,

RAGHUNANDANA and others concur in that exposition. But CULLÚCABHATTA thus expounds the text: 'at the time of acquisition, if there be a common exertion with the father for common gain, an unequal division shall not be made.' CHANDÉSWARA has a similar gloss; and the *Viváda Chintámeni*, in effect, concurs in this exposition: for it is there said, 'this concerns property acquired by brothers contributing equal labour to the acquisition; there is consequently no discrepance.' In effect, the gloss intends property acquired by the equal exertion of brothers in common with their father. Should it be acquired independently of the father, it will be mentioned, that the sons alone have power over it, since they are principals in the acquisition.

Two objections have been noticed by SRÍ CRÍSHNA TERCALANCÁRA, author of a commentary on the work of JÍMÚTAVÁHANA: 'since reason sufficiently shows that unequal partition ought not to be made, the text is superfluous;' and again, 'since MENU declares, "if a deduction be thus made, let equal shares of the residue be ascertained and received," the portion deducted being first set apart out of the undivided estate, it falls not within partition, but precedes it.' On this point it is said, if a joint acquisition be made by brethren, an unequal partition should not be allowed: this, it must be affirmed, is admitted by TERCALANCÁRA; for he says, 'reason sufficiently shows, &c.' But if all the brethren unanimously demand partition, shall or shall not unequal partition be made? This is the question between CULLÚCABHATTA and JÍMÚTAVÁHANA and the rest. The text relating to what reason sufficiently shows, another revealed law must be established as the foundation of the proceeding in the case of partition unanimously demanded. Such is the objection according to JÍMÚTAVÁHANA and others. As the text is expounded by thee as repeating what reason sufficiently shows, so may it not be also expounded by me as relating to what reason does sufficiently show: for a son, unable to earn a livelihood, demands

mands a partition undue in respect of himself, and injurious to his father; hence, since he commits an offence, a greater portion shall not be given to him? No; for the word 'with' would be unmeaning; and it is proper to affirm, that, if an exertion be made, both by a son unable to earn a livelihood, and by the rest, an unequal division shall not be made. It has been said, 'since reason sufficiently shows, &c.' Now, what proof is there that a father may not give the portion of an eldest son out of what he may acquire with the co-operation of his children, or a greater share on account of inability *to earn a livelihood*; for no other text declares it, nor does the reason of the law show it? But if it be affirmed, that this is propounded with a view to the case of sons who have been unaided by their father, still there is no question; for sons alone have the ownership in the case of an acquisition made independently of the father. The law, therefore, obviates the supposition, that, the father having full power over property acquired by the joint and equal exertion of sons, his distribution of less *to one* and more *to another*, through his own stubborn will, is not inconsistent with common sense. Let it not be objected, that to seek another revealed law as foundation *for the proceeding in the other case*, is equally elaborate. That it would be elaborate when this is unavoidable, is no *legitimate* objection; and thou wouldst find it more tedious to establish a *double* import of this text from the ambiguity of the terms, lest disparity should thus occur: the brothers having equally contributed to the acquisition, any one of them, who has a large family to maintain, shall take a greater share; but, the brothers having made equal exertions to obtain partition, any one who has a large family to support shall *only* receive an equal share *with the rest*.

As for what has been said, that the deduction of a twentieth part falls not within partition, that does not appear accurate; for VRĪHASPATI (XXX) declares a distribution of shares with a deduction of a twentieth part to be one form of partition, and without it, the other form; and partition, consisting in the property being predicated of each son individually after divesting the property of all the sons collectively, and in the ascertainment of *individual* property previously unascertained, does exist in this case. On the contrary, MENU propounding equal shares after having explained the deduction of a twentieth and the like, it appears

that the term "equal partition" signifies the allotment of shares without a deduction of a twentieth part. However, it appears, from the insertion of the word "never," that an unequal division originating in filial piety or the like should not be made. Accordingly MISRA cites this text (XXIX) after explaining the deduction of a twentieth part. Again; the word "*utt'hāna*," signifying acquisition, occurs in the instance of concerns among partners (*sambhūya samutt'hāna*), more literally, common exertion of partners. There is no objection to its also bearing the same sense in this instance.

XXX.

VRĪHASPATI:—Two modes of partition among heirs are expressly mentioned; one with attention to priority of birth, and the other with equality of allotment.

As for what is said, that, when sons demand partition, an unequal division should not be made, even on account of *filial piety* or the like, because, however dutiful he may have been, the son has in this instance committed an offence; the answer is, since such an allotment depends solely on the choice of the father, it is already known that no such allotment is made, if he do not choose it. Of what use then is this text? If the father, nevertheless, do give *such greater share*, the other sons may oppose it; *for* it is declared by the law, that unequal partition shall not be granted when the brethren themselves make the exertion; a text propounded for this purpose is pertinent, *and not superfluous*: if this be alleged, *the answer is*, it is inconsistent with common sense that the law should attend to the claims of men guilty of equal offences.

A man has five sons; one dutiful, one unable to earn his livelihood, another burdened with a large family to be maintained, a fourth otherwise circumstanced. These four, but not the fifth, demand a partition. In this case unequal distribution on account of piety, duty, or the like, may be made; for there is no common exertion of all the brethren. If many, not all, be the determinate

sense

sense of the plural term, can there be no unequal division in the case of two sons, should they both demand partition; for, on this supposition, there is no common exertion of many, *that is, of three or more?* If the sense of the inflection be indeterminate, then, even in the case of five sons, any one contumacious son, demanding partition, might prevent the allotment of a greater share to the dutiful son; which is inconsistent with common sense.

Such is the opinion of ancient authors. But JÍMÚTAVÁHANA and the rest assert, in as many words, that if the sons unite in demanding partition, a greater portion cannot be given to one on account of piety and the like, but the portions of the eldest son and the rest may be allotted to them, provided they be virtuous. On this question the intelligent must decide. This brief statement may suffice.

XXXI.

VRIHASPATI:—Sons, to whom equal, less, or greater shares have been allotted by their father, should maintain such distribution; otherwise they shall be chastised.

According to CHANDÉSWARA and others, this text concerns wealth acquired by the father without co-operation of the sons; and the text of MENU (XXIX) concerns property acquired with their co-operation: there is no contradiction. According to JÍMÚTAVÁHANA and others, the text of MENU should be adduced in the case of partition demanded by the sons, and the text of VRIHASPATI in the case of partition made by the father of his own accord.

XXXII.

NÁREDA:—Whether the father distribute equal shares to his sons, or give more wealth to some, and less to others, *according to circumstances*, such shall be their shares; for the father is lord of all.

This and the following text of YÁJNYAWALCYA have the same import with the text of VRĪHASPATI.

XXXIII.

YÁJNYAWALCYA :—The distribution made by the father is declared binding on sons among whom an unequal division has been made.

Again ; these texts imply, that if the father give a greater portion to one son on account of his filial piety or the like, another son may not oppose that disposition. But should he give his whole fortune, or nearly the whole, to one son, through partiality, and give nothing to another, or a trifle only, through resentment, such a distribution may be resisted. The text of VRĪHASPATI and others cannot deny the right of opposition ; for it is declared in the text above cited, that “ the father has no power, in such circumstances, to make a partition different from the law of inheritance ” (XXVIII). The acquisition of property by co-operation of father and sons shall be subsequently discussed.

A deduction of a twentieth part has been mentioned : of what nature is that deduction ?

XXXIV.

MENU :—The portion deducted for the eldest is a twentieth part *of the heritage*, with the best of all the chattels ; for the middlemost, half of that, *or a fortieth* ; for the youngest, a quarter of it, *or an eightieth*.

That which is deducted (*uddhriyatē*), is a deduction (*uddhāra*) or portion deducted. “ A twentieth part ” is one part in twenty. The best of all the chattels *shall be also allotted to him* ; for the particle bears the collective sense : both should be given to the eldest, and should be first set apart for him. Next, “ half of that,” or half of a twentieth part, that is, one part in forty, must be

be set apart for the middlemost ; and “ a quarter of it,” or a quarter of a twentieth part, that is, one part in eighty, for the youngest. Dividing the residue into equal shares, as directed by MENU (XXXIX 1), let one share, together with the twentieth part *already deducted*, be given to the eldest ; another, with the fortieth part, to the middlemost ; another again, with the eightieth part, to the youngest.

This is the first of two modes of partition mentioned by VRĪ-HASPATI (XXX). The fortieth part should be computed on the whole estate, not on the residue after deducting a twentieth part ; for that is expressly declared by the term “ half of that.” The same *should be also affirmed* in respect of an eightieth part. Consequently, where three sons *inherit*, and the estate amounts to one hundred *suvernas*, five must be first set apart for the eldest ; half of that, or two *suvernas* and a half, for the middlemost ; and one and a quarter for the youngest : eight *suvernas* and three quarters being thus appropriated, the residue, amounting to ninety-one *suvernas* and a quarter, should be equally divided. Such is the whole sense.

Since “ equal shares ” (XXXIX 1) suppose partition made by sons, after the demise of their father ; and the deduction of a twentieth part and so forth is thus propounded (XXXIV), after premising partition subsequent to the death of the father (XVIII) ; is not that deduction unconnected with a distribution made by the father himself ? No ; for MENU has supposed the deduction of a twentieth part and so forth in the case of partition made by the father ; else he would not have ordained an equal distribution in the case of a common exertion among brethren (XXIX), for equal partition would be a matter of course. Therefore, unequal division takes place even in the case of partition made by the father : and the deduction of a twentieth part and so forth constitutes that unequal division, as above mentioned ; for he has declared no other mode.

XXXV.

MENU :—If brethren once divided, and living again together as parceners, make a second partition,

the shares must in that case be equal, and the first-born shall have no right of deduction.

Attention to priority of birth is thus forbidden in the case of a second partition made among brothers who were re-united. By the texts which immediately follow (Chap. 9, v. 211 and 212), if any one of the brothers die, his uterine brothers and sisters shall divide his share. In the text (v. 213), the greater share in right of primogeniture, comprising the twentieth part and so forth, is denied to an eldest son who is not virtuous. By the following text (v. 214), all those brothers, whether first-born or younger, who are addicted to any vice, lose their title to the inheritance. Virtue, as well as primogeniture, is declared requisite. The subsequent text (v. 215 and XXIX) cannot relate to unequal partition of another kind; for the right of primogeniture is the subject considered. But the word "never" bears an allusion to the greater allotment on account of filial piety or the like, as mentioned by other Sages: it does not intend that alone; for it is wrong to assume an argument from an allusion to what has been propounded by others, wholly neglecting what had been said by *the author himself*.

It is asked, if a man have five sons, what shall be the shares of the others besides the eldest, middle, and youngest; for MENU has not propounded their additional portions? The answer is, there are no others; for the eldest is the first-born of all the sons, the youngest the last-born, and all the intermediate sons are middle. MENU himself makes this evident.

XXXVI.

MENU:—The eldest and youngest respectively take their just mentioned portions; and if there be more than one between them, each of the intermediate sons has the mean portion, *or the fortieth*.

"Just mentioned;" declared in the preceding texts. "The mean portion;" a fortieth part: and that shall be given to each of them; not a single fortieth part distributed among all the inter-

diate sons, for that would be an unjust disparity. Consequently one part in twenty, and the best chattel, shall be given to the eldest, and the several portions ordained shall be allotted to the rest. Such is MENU's intention, as expounded by CHANDÉSWARA : and that must be understood, *both* in the case of partition made by a father, and in that of partition made by brothers.

XXXVII.

MENU:—Of all the goods collected, let the first-born, *if he be transcendently learned and virtuous*, take the best article, whatever is most excellent in its kind, and the best of ten cows or the like.

Here also, as had been already mentioned, he shall take the best of all the chattels. In the preceding text (XXXIV), one part in twenty was ordained; but in this text, one in ten, that is, the best of ten chattels. Such is the difference. Texts of GÓTAMA, BAUDHÁYANA, DÉVALA, and others to the same purport, will be cited.

XXXVIII.

MENU:—But, among brothers equally skilled in performing their several duties, there is no deduction of the best in ten, *or the most excellent chattel*; though some trifle, as a mark of greater veneration, should be given to the first-born.

What had been said, “of all the goods collected, let the first-born take whatsoever is most excellent in its kind,” is not applicable to the present case: a trifle only, as suggested by the phrase “let the first-born take the best article,” shall be given to him as a mark of greater veneration, or as evidence of increasing respect. In what case shall this be done? The legislator explains it; “among brothers equally skilled in performing their several duties:” if all the brothers be equally assiduous in the study of

scripture, in the use of arms, in commerce, in service, or the like, one part in ten shall not be given to the eldest: and since that is merely illustrative, one part in twenty also shall not be given; but one excellent chattel only shall be given.

XXXIX.

MENU:—If a deduction be thus made, let equal shares of the residue be ascertained *and received*; but if there be no deduction, the shares must be distributed in this manner:

2. Let the eldest have a double share, and the next born a share and a half, *if these two clearly surpass the rest in virtue and learning*; the younger sons must have each a share: *if all be equal in good qualities, they must all share alike*. Thus is the law settled.

The first hemistich has been *already* expounded. The law-giver propounds the share of an eldest son in another form; “but if there be no deduction, &c.” If that be not done which has been thus directed, “of all the collected wealth, let one part in twenty be first allotted to the eldest son, and so forth;” *in other words*, if that *portion* be not set apart, then this distribution, which will be mentioned, must be made of all the collected wealth. The Sage propounds it *in the second verse*. Of all the goods collected let the eldest take two shares; the next born, or second brother, a share and a half; and the rest, a share a piece. Add one to the number of sons; to this doubled, again add one, and divide the amount of the heritage by this divisor; the quotient is a share: give four such shares to the eldest brother, three to the second brother, and two to each of the others. For example; let the sum be seventy-eight *suvernas*, to be divided among five brothers: seventy-eight *suvernas* being divided into thirteen parts, each share amounts to six *suvernas*; and the portions are ascertained at twenty-four *suvernas* for the eldest, eighteen for the second, and twelve for each of the others.

Thus

Thus MENU delivers four modes of unequal partition; and since partition cannot be made four ways in the same case, it must be affirmed that he intends a distinction according to circumstances. Such is the opinion of CULLÚCABHATTA, CHANDÉSWARA and others. VÁCHESPATI BHATTÁCHÁRYA gives a similar exposition; but adds—‘ In the case of partition by a father, the deduction of a twentieth part and so forth shall not be given to the eldest son to increase his portion; for that belongs to the subject of partition among brothers. The portion of an eldest son and so forth, which is ordained in the several texts wherein partition made by a father is propounded, should alone be allowed in the case of a partition made by him.’ Those texts follow.

XL.

BAUDHÁYANA, citing the scripture:—“ *Let equal shares be given to all without distinction, or let the eldest deduct the most excellent chattel:*” or let the first-born take one of ten *cows and the like*, and let the rest share equally.

He directs the best chattel to be given to the eldest, and one out of ten cows, or other decade of homogeneous things.

XLI.

DÉVALA:—The mean portion, *or fortieth part*, is ordained for sons who have equal pretensions; *but* let the tenth part of the heritage be given to the eldest, who conducts himself strictly according to law.

The Sage directs, that the tenth part *of the heritage* shall be allotted to the eldest; and the mean portion ordained by MENU, or one part in forty, to the others.

XLII.

XLII.

APASTAMBA :—Having satisfied the eldest with one chattel, let the father, who makes a partition in his life-time, assign equal shares to his sons, but exclude one who is emasculated, insane, or degraded.

‘ He ordains, that one chattel only shall be given to the eldest ;
 ‘ but equal shares to the other sons. From the mutual disagree-
 ‘ ment of these texts, the rule of decision must be argued accord-
 ‘ ing to their different imports. If the eldest be transcendently
 ‘ virtuous, and the rest be not virtuous, *the partition shall be made*
 ‘ *in the second mode propounded by BAUDHÁYANA (XL) ; that*
 ‘ *is, one part in ten shall be allotted to the first-born : if the eldest*
 ‘ *have some virtue, and the others none, a tenth part must be*
 ‘ *given to the first-born in addition to his share of the residue, and*
 ‘ *a fortieth to the others, as ordained by DÉVALA (XLI) : if all*
 ‘ *be deficient in virtue, one chattel, as directed by APASTAMBA*
 ‘ *(XLII), shall be given to the eldest in addition to his share ; and*
 ‘ *that chattel shall be the best article ; for this coincides with the*
 ‘ *first mode propounded by BAUDHÁYANA.*’

The text of DÉVALA may also be applicable to the case where the eldest son is transcendently virtuous, and the rest have some good qualities ; for, the same commentator has so said in treating of another case where four shares are allotted *to the eldest son*. CHANDÉSWARA appears to have entertained the same notion ; for he inserts these texts under the title of Partition made by a father, but places the texts of MENU and the rest under the title of Partition among brothers after the death of their father : however, he has further inserted the following text under the same title :

XLIII.

SANC'HA and LIC'HITA :—To the eldest son a bull shall be given ; to the youngest, a house other than the father's habitation.

And

And this is enjoined even without the father's acquiescence, if the eldest and youngest sons be virtuous; else the precept would be nugatory. This is also admitted by HELÁYUDHA. May not this text concern partition among brothers after the death of their father, since the phrase "other than the father's habitation" suggests the father's decease? No; for it occurs under the same title with the following text, in which partition by a father is evidently intended:

XLIV.

SANC'HA and LIC'HITA:—If there be one son, let *the father* himself reserve two shares, and the best of the slaves and cattle.

The meaning of the text is this: having taken, as an additional portion, one of the bipeds and quadrupeds, a male or female slave, and a cow or the like, let the father reserve for himself two shares; and in the former text, "other than the father's habitation," signifies, excepting the house inhabited by the father. The word (*avast'hāna*), from its etymology, bears the sense of locality. It should be here remarked, that the additional portion thus ordained is intended as a token of greater veneration towards the father, like the portion of an eldest son; and it must be allotted to him, even though he be deficient in virtue. If he be virtuous, then more must be allotted in proportion to his good qualities. What more? In answer to this question, the portions mentioned in texts relative to the share of an eldest son are adduced. In this instance the equality of the father and eldest brother should be acknowledged. But that has not been mentioned by VÁCHESPATI BHATTACHÁRYA: he considers both texts of SANC'HA and LIC'HITA as relating to partition among brothers; for one (*ēca*) is explained, 'chief, other, alone.' (AMERA's Dictionary.) "One son;" the chief son; that is, the eldest son: he may reserve two shares for himself, as directed in the following text:

XLV.

XLV.

VRĪHASPATI :—The eldest, *or he who is pre-eminent* by birth, science, and virtuous qualities, shall receive two shares of the heritage; the rest shall share alike: but he is *venerable*, like their father.

There is this difference only; the first text (XLIII) imports, that he shall further receive some trifle, such as a chattel. In the *Pārijāta* also, “one son” is explained eldest son; and the sense of the second text (XLIV) is thus obvious. But the author of the *Bhāṣya* reads *yady ēcaḥ syāt*, if he be single, instead of *yady ēca putrah syāt*; and expounds that reading, ‘if he be single, or have lost his wife, he may reserve two shares; but if his wife be living, he must satisfy her with another share: and he may take one of the bipeds and quadrupeds in addition to the two shares reserved.’ Its consistence with the text of YĀJNYAWALCYA, “or divide the estate among them in equal shares” (XXVI), must be established by HELĀYUDHA, by the author of the *Bhāṣya*, and by CHANDÉSWARA, explaining that text as relating to the case where all are deficient in virtue: the apparent contradiction is reconciled by VACHESPATI BHATTĀCHĀRYA, referring one text to the case of an eldest son very deficient in virtue: on this subject nothing is directly stated in the *Vivāda Chintāmeni*, *Dāyatātwa*, works of JĪMŪTAVĀHANA, and other books. But the uncertainty as to what adjustment should be made if both the eldest and second son be virtuous, is a reproach to the gloss of CHANDÉSWARA and the rest, and to that of VACHESPATI BHATTĀCHĀRYA. Again; the text of DÉVALA, “the mean portion, &c.” (XLI), is also explained by VACHESPATI BHATTĀCHĀRYA, from parity of reasoning, as implying partition among brothers. *But*, were it so, why should not *all* texts which relate to partition among brothers be also adduced in the case of partition by a father, since a question can be thereby satisfied? This should be discussed.

Texts which propound the portion of an eldest brother in the case of partition among brothers, are here cited incidentally.

The

The text of MENU (XXXIV) and others have been *thus* quoted and explained. As for this text of MENU (XXXIV), *its sense is*, ‘ If there be many sons by one mother, and all virtuous, but ‘ the relative degree of virtue decline in the order of birth, then a ‘ twentieth part of the collected wealth shall be deducted for the ‘ eldest son, and the best of all the chattels shall be given to him ; ‘ half of that, or the fortieth part, with the mean chattel, shall ‘ be given to the middlemost ; and a quarter of it, or the eightieth ‘ part, with the worst chattel, shall be given to the youngest.’ Thus CHANDÉSWARA comments on the text. Here, it should seem, the mean chattel for the middlemost, and the worst chattel for the youngest, though not directed by the text, are asserted from their parity with the form of the portion allotted to the eldest. Some lawyers contend, that this should not be admitted on the *simple* affirmation of CHANDÉSWARA : the relative degree of virtue declining in the order of birth can only be well applied to the case of three brothers ; else, since no fourth or fifth share has been propounded, and since the precedent reasoning, which shows the same additional portion for all the intermediate brothers, would be irrelevant, the text could not be fitly applied. In fact, “ youngest ” (XXXIV) may signify the third brother ; the fourth brother, the fifth, and the rest, even though virtuous, have no additional portion, since none has been ordained by the Sage : this we hold reasonable. It disagrees, however, with the gloss of CHANDÉSWARA on a text which will be cited. To this some object, that the supposed case of relative degrees of virtue declining in the order of birth is nugatory ; even among brothers equally virtuous, a greater portion must be given to the first-born, for he is pre-eminent : in the uncertainty what should be given, the double share mentioned by MENU should be allotted to him as the greatest portion in comparison with the rest ; to the youngest should be allotted the smallest of all the portions specified by MENU. That cannot be ; for MENU himself (XXXVIII) denies a deduction among brothers equally endowed with good qualities ; and the text is so expounded by CULLÚCABHATTA. Consequently that should not be admitted. It is proper to allow some chattel in right of primogeniture : and something should be given in right of pre-eminence in virtue, proportionate to the degree of it ; that something

thing should be the best of all the chattels, for this coincides with the text of BAUDHÁYANA (XL). We cannot therefore determine, why a mean chattel for the middlemost, and the worst chattel for the youngest, unnoticed by CULLÚCABHATTA, are asserted by CHANDÉSWARA. It should not be argued, from the following text, because “ successively ” signifies in order, that the eldest shall have the best *chattel*; the middlemost the mean *chattel*; the youngest the worst. That term relates *only* to the allotment of dwelling-houses.

XLVI.

HÁRÍTA :—When a herd of kine is to be divided, let the rest of the brethren give a bull, *in lieu of* the best chattel, to the eldest brother, or give him the best *portion*; leaving *to him* the *images of* deities and the *patrimonial* house, let them remove and erect other habitations: *or if they remain* in the same court, the best apartment shall be assigned to the eldest, and successively *the next best* to the others.

The sense of the text is this: let a bull, *in lieu of* one chattel, that is, in lieu of the best chattel, be given to the eldest; this shall be given over and above his share. The lawgiver subjoins an alternative; or the best and most excellent *portion*: the text must be so supplied. “ Deities; ” images of VISHNU and the rest. “ The house; ” that which was built by their father; the ancient abode *of the family*, and so forth: this supposes one only house. Shall the rest remain without a habitation? Therefore does the Sage add, let them remove, and erect habitations beyond the limits of the court or yard: but if they cannot remove and erect other houses, then, says the legislator, the best quarter shall be assigned to the eldest. CHANDÉSWARA so expounds the text. “ If they remain in the same court, ” or in the house built by their father, *such an arrangement shall be made*. In the *Ret-nâcara* the term used in the text (*dacshina*) is explained best: that shall

shall belong to the eldest; and successively the mean apartment to the middlemost; and the worst to the youngest. Some explain the term, *literally*, the south quarter; for that is best: successively, east, north, and so forth, *shall quarters be assigned to the rest.*

The text of MENU (XXXVI) is thus expounded in the *Ret-nācara*: ‘If the eldest and youngest be virtuous, and several intermediate sons be deficient in virtue, the eldest and youngest respectively take the twentieth and the eightieth parts, and all the intermediate sons take a single fortieth.’ But, if the intermediate sons be virtuous, each of them shall receive a fortieth part. Should the eldest alone be virtuous, he shall take the best article out of all the goods collected (XXXVII). If the eldest surpasses the rest in virtue, and they have good qualities in a moderate degree, though somewhat inferior to the youngest, then GÓTAMA propounds *the rule of distribution.*

XLVII.

GÓTAMA:—A twentieth part of the heritage, a pair of kine, a car with the beasts which have teeth in both jaws, (*namely horses, asses, and the rest,*) and the bull kept for impregnation, shall belong to the eldest; cattle blind of one eye, or old, and those of which the horns are broken, and the tail hairless, shall belong to the middlemost, if there be two or more head of such cattle; a ewe, some grain, a little iron, a house, a cart and yoke, and one of every sort of quadruped, shall belong to the youngest; the residue shall be equally divided.

“A twentieth part;” the twentieth part deducted as above-mentioned: a pair of kine: “beasts which have teeth in both jaws;” as horses, asses and the like: “a bull;” one capable of impregnating the cows: this deduction shall, if possible, be made for the eldest. “Old;” aged: “the horns of which are broken;” which have broken horns: “and the tail hairless;” of which the tail-

tail-bone is destitute of hair : this deduction shall be made for the middlemost, provided there be two or more *head of such cattle*. An ewe, some grain, a little iron, one house, a cart, a pair of oxen, and one of every kind of quadruped, cows and the rest, shall be deducted for the youngest. The residue shall be equally divided. Such is the exposition conformable with the gloss of CHANDÉSWARA. But, if there be no cows blind of one eye and the like, what shall be done? The answer is, some trifle must be given as an equivalent. It should not be argued, that, like a promised sacrifice, if effects be wanting, nothing shall be given. When the thing is ascertained, and the question be relative to the act, in this form, “what shall be done with this thing ;” then alone, on failure of the thing, the act is annulled: but, when the gift is ascertained, and the question be, “to whom shall it be given?” which is answered by the command, “give it to such a one ;” then, on failure of the thing, it is reasonable that an equivalent should be given. Thus do some lawyers expound the law.

XLVIII.

APASTAMBA :—In certain countries a *suverna*, a black cow, and the black produce of the earth, devolve on the eldest son, together with the utensils of the common father.

“Black produce of the earth,” as *tila*, pease and the like.
“Utensils ;” vessels for eating and so forth.

XLIX.

BAUDHÁYANA :—On the death of the father, the portion of an eldest son is, in the order of the four classes, a bull, a horse, a goat, and a sheep.

“In order ;” that is, a bull *shall be the portion of a Bráhmaṇa* ; a horse, of a *Āśhatriya* ; a goat, of a *Vaiśya* ; a sheep, of a *Súdra*. According to SRÍ CRĪSHNA TERCÁLANCÁRA, *Súdra* here sig-

nifies the son of a man of the servile class by a woman of the same tribe ; there is no inconsistency. But, according to RAGHUNANDANA and others, *the term here signifies* one born of a woman of the servile class by any father, whether of the sacerdotal or other tribe.

L.

VASISHT'HA :—Partition of heritage among brothers shall be thus made : the eldest shall take a double share, and the tithe of cows and horses ; the youngest shall have the goats and sheep, and one house ; *the sword and other* black iron, and the furniture of the house, shall belong to the middlemost.

Since the particle connects the tithe of cows and horses with what had preceded, this also shall accrue to the eldest. How many goats and sheep shall belong to the youngest ? As many as possible. The middlemost shall have the sword, which is made of iron, the pestle and mortar, and the rest of the furniture.

From the mutual contradiction of these texts, the partition is regulated by authors determining the degrees of virtue. That shall be now recapitulated.—1st, VÁCHESPATI BHATTÁCHÁRYA considers the text of MENU (XXXIV) as applicable to the case where many sons inherit the estate, and the degrees of virtue they possess decline in the order of birth. CHANDÉSWARA concurs in that exposition, and remarks, that “the youngest” signifies one born after all the rest, and that all the intermediate sons shall have a fortieth part. We understand by the word “youngest,” in this place, the third son : the deductions for the fourth son and the rest shall be successively half of that which preceded. Some also admit this *deduction* in the case of partition by a father : but that is not approved by VÁCHESPATI BHATTÁCHÁRYA, nor by CHANDÉSWARA ; and nothing is expressly said on this point in the works of JÍMÚTAVÁHANA and the rest.—2dly, According to the gloss of CHANDÉSWARA on the text of MENU (XXXVI), if both the eldest and youngest be virtuous, and the intermediate brothers be deficient in virtue, the eldest and youngest respectively share, as deductions, the twentieth part and

the quarter of it, and all the intermediate brothers share a single deduction of a fortieth part: but, if the intermediate sons be virtuous, each of them shall deduct a fortieth part. VÁCHESPATI BHATTÁCHÁRYA holds, that, if all be equally virtuous and learned, the eldest and youngest respectively share the twentieth part and the quarter of that deduction, and each of the intermediate brothers has a fortieth part. We affirm, that, the intermediate brothers being less virtuous than the eldest, and either less or more virtuous than the youngest, the rule must be settled in *one or the other* of the two modes proposed by CHANDÉSWARA.—3dly, When the eldest is transcendently virtuous, and the rest deficient in virtue, the rule is assumed in the *Ret-nácara* from the text of MENU (XXXVII). VÁCHESPATI BHATTÁCHÁRYA concurs therein; but expounds the text, ‘of all the goods collected let the first-born take the best article in each sort.’—4thly, CULLÚCABHATTA appears to consider the text of MENU (XXXVIII), as regulating the case where all are equally virtuous. The text of HÁRÍTA (XLVI) intends the same case. But JÍMÚTAVÁHANA says, ‘there shall be no deduction of the best in ten cows or the like.’—5thly, When the eldest, and he who was born next after him, possess the good qualities described, and the others are deficient in virtue, the rule is deduced by VÁCHESPATI BHATTÁCHÁRYA from the text of MENU (XXXIX 2). But some hold this rule applicable when the eldest is transcendently virtuous, and any one younger son is less virtuous in the subduple proportion.—6thly, According to some lawyers, these texts of MENU are also applicable to partition by a father. From the text of GÓTAMA (XLVII), CHANDÉSWARA deduces the rule, when the eldest surpasses the rest in virtue, but they possess good qualities in a moderate degree. Some consider this rule as applicable when the eldest possesses the science and practice suitable to his own class.—7thly, The rule of APASTAMBA (XLVIII) should be adduced when the eldest possesses virtue in an inconsiderable degree.—8thly, In the *Ret-nácara*, the text of BAUDHÁYANA (XLIX) is applied to partition in the same circumstances. But some consider it as intending the same case with the text of MENU (XXXVIII).—9thly, From the text of VASÍSHTHA (L), VÁCHESPATI BHATTÁCHÁRYA deduces the rule when the eldest has a double degree of virtue,

virtue, and the rest one degree each. CHANDÉSWARA *assumes it*, when the eldest is transcendently virtuous, and the rest *simply* virtuous; but he has inserted this text, after premising partition among brothers by two or more mothers. Modern lawyers deduce from this text a rule for the case when the eldest son is endowed with an assemblage of good qualities, science, conduct, *care of his brethren* and so forth.—10thly, From the text of DÉVALA (XLI) HELÁYUDHA and the *Párijatā* deduce the rule when the eldest is versed in scripture, and the rest are deficient in virtue: they explain “the mean portion,” the deduction of a twentieth. Others, says CHANDÉSWARA, *adduce this text*, when the eldest is skilled in *sacrifice with fire*, and in *the study of the Védas*; but the rest are simply virtuous: the mean portion signifies the deduction of a twentieth. VÁCHESPATI BHATTÁCHÁRYA concurs therein; but explains “mean portion,” the deduction of a fortieth.—11thly, CHANDÉSWARA, from the texts of VRĪHASPATI (XLV) and GÓTAMA (LI), deduces the rule when the eldest is transcendently virtuous, and the rest are deficient in virtue. But VÁCHESPATI BHATTÁCHÁRYA expounds it, ‘if the rest have good qualities in a small degree:’ he thinks, that the eldest could not *be said to* surpass the rest in science, unless they possess learning in a small degree. It must be also affirmed, say some lawyers, that he supports *his brethren* like a father; for he takes a *superior* share like a parent, and the text describes him as equally venerable with their father. It should be here considered, that one excellent chattel must be given to the father’s first son; should he be versed in the science suitable to his class, a deduction should be allowed in proportion to his knowledge: if he support them, like a father, from their early infancy, he may take an unequal share; and if his conduct be strictly proper, another chattel should be assigned to him. This may be argued from common sense, or from the reason of the law. Since it is not *otherwise* expressed, all besides the eldest and youngest are middlemost, that is, *intermediate*. VÁCHESPATI BHATTÁCHÁRYA considers the equality of allotment mentioned in the text of VRĪHASPATI (XXX) as applicable to the case where the eldest is deficient in virtue, but the rest are equal to each other in good qualities. The same must be also understood in respect of property acquired by the common exertion of several brothers, even

though deficient in good qualities. The text of MENU (LII) forbids the deduction of a twentieth part in favour of an eldest brother, who defrauds his juniors; for CULLÚCABHATTA expounds "deprived of his own share," deprived of the share to which he would have been entitled on account of primogeniture.

LI.

GÓTAMA:—Or the first-born shall have two shares, and each of the rest one.

LII.

MENU:—Any eldest brother, who from avarice shall defraud his younger brother, shall forfeit *the honours of* his primogeniture, be deprived of his own share, and pay a fine to the king.

On this subject modern lawyers say, if the brethren be void of offence, the portions of younger brothers decrease with the order of birth in a subduple proportion to the deduction of a twentieth part. That the deduction of a twentieth part shall belong to the first-born of all the sons, is natural: if he be endowed with science and virtue, twice as much, or a tenth part, shall be allotted to him. In like manner, if the intermediate sons be also endowed with science and virtue, they shall have the double of their own *regular* portions. But if the eldest support and educate his brothers, like a father, one additional share shall be assigned to him as to a parent: in like manner, if the middlemost or youngest do so, half a share, or a quarter, or the like, *shall* be allotted to them: "next born," in the text of MENU (XXXIX 2), is merely an instance. The allotment of a pair of oxen and so forth (XLVII) *is regulated* by the various degrees of virtue and good conduct. If younger brothers surpass their elders in virtue, there is no deduction of the best in ten (XXXVIII); but some trifle should be given to the first-born. Should he offend, by defrauding his *younger* brother, an equal share only shall be allotted to him;

him ; even though he have both good and bad qualities, nothing shall be given *as a mark of veneration* : like the fine to the king, this also is another penalty imposed on him.

If the deduction of a twentieth part and so forth in favour of the first-born and the rest do not occur in these days, the uncensured practice of good men, or the contumacy of younger brothers, is the ground *on which it is refused*, not the want of elder brothers entitled to that deduction ; for even now are found elder brothers versed in science, skilled in arms, and so forth.

Is the deduction of a twentieth part *ordained for partition* among brothers in general, *whether by the same or by different mothers*, or among uterine brothers only ? To this VÁCHESPATI BHATTACHÁRYA replies, ‘ the double share mentioned by VRĪHASPATI (XLV) concerns uterine brothers only ; for, having delivered in this text a precept couched in general terms, the Sage specifies a distinction in the following text, which ordains the delivery of the deducted allotment, and relates to that alone.’

LIII.

VRĪHASPATI and MENU* :—All the sons of twice-born men, produced by wives of the same class, must divide the heritage equally, after the younger brothers have given the first-born his deducted allotment.

‘ The text of BAUDHAYANA, “let the first-born take one of ten cows, &c.” (XL), those of MENU (XXXVII and XXXIV), and the text, which ordains equal shares, may also concern *half brothers by different mothers.*’ His meaning is this : from the terms of the text of VRĪHASPATI (LIII), and the rule of VISHNU (LIV), it *appears* that a deduction should only be given to the first-born, not to the middlemost also. That deduction is of three kinds : the best, as propounded by MENU (XXXVII) ; the mean portion, as ordained by BAUDHAYANA (XL) ; the worst, as specified by MENU (XXXIV). By affirming three modes of deducting the portion *of the first-born*, three questions

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are

* MENU, Chap. IX. v. 156 ; but here cited as a text of VRĪHASPATI.

are satisfied ; and texts which propound other forms of deduction, are not admitted *in this case* : no deducted allotment is given to the rest ; their good qualities need not be examined.

LIV.

VISHNU :—Let sons produced by wives of equal class receive equal shares, but give the best chattel with a deducted allotment to the first-born.

But modern lawyers hold, that the several texts should be adduced, if a brother be endowed with such and such good qualities. JÍMÚTAVÁHANA also considers the text of VRĪHASPATI (XLV) as applicable to uterine brothers only. But CHANDÉS-
WARA, after premising ‘partition among brothers by several mothers,’ inserts the text of MENU (XXXIX 2), and the rule of GÓTAMA (LI), and attributes to them a similar import with the text which propounds the deduction of a twentieth part. MENU, having propounded four or five cases of deducted allotments, and not expressly noticing the general subject of partition among sons born of different mothers, proceeds to the succession of an elder son born of a wife last married. For this reason CHAN-
DÉS-
WARA has supposed no difference in respect of the double share and the like, between sons born of different mothers, or born of the same mother. VÁCHESPATI MISRA concurs in that opinion. The text cited (LIII) is a mere repetition : after declaring unequal partition among sons produced by wives of different classes, to obviate the same *supposition* in the case of wives equal in class ; it does not distinguish between the share increased by a twentieth, and the equal share ; for both depend solely on the qualities of the brothers. Consequently, under the term “deducted allotment” an equal share is comprehended, as well as the share augmented by a twentieth part of the heritage ; it is not proper to deduce any consequence solely from the literal sense of the term “deducted allotment :” else, the deduction of a twentieth part might be assigned to an eldest brother of the half-blood, who may be deserving of that allotment ; but the portion of an elder brother could not be given to one who should merit a double

ble share: were it so, the disparity would be great and unjust. Such is their meaning.

LV.

MENU:—A younger son being born of a first-married wife, after an elder son had been born of a wife last married, it may be a doubt in that case how the division shall be made:

2. Let the son born of the elder wife take one most excellent bull deducted from the inheritance; the next excellent bulls are for those who *were born first, but* are inferior on account of their mothers, *who were married last.*

This doubt arises in the case of two or more sons produced by wives equal in class; for, partition of heritage among sons of various classes will be subsequently propounded. The *Retnâcara*.

Let the first-born (*pûrvaja*), that is, the son born of the elder wife, *though* in fact last-born, take one most excellent bull.

CULLÚCABHATTA.

The author of the *Pracâsa* concurs in that exposition. This deduction is allotted to the younger son born of a first-married wife, because his mother is the wife married from a sense of duty; for she is described in the text of DACSHA (Book IV, v. LI). But, if the first wife be barren; from the second wife, a younger son be born; and from the third, an elder son; it should seem that the bull shall be given to the son of the second wife: for, “the elder wife” is here a general expression; and the allotment is only grounded on the text, since reasoning is not adduced. However, this argument does exist; that, as respect is due to brothers born before them, from those who are born last, so is respect due from wives last married to those married before them. “Elder wife” signifies earlier married: “younger wife” signifies later married. The senior and junior rank of wives is not regulated by their age; for the term is explained in the *Retnâcara* and other works, ‘first married or earlier espoused.’ “The next excellent bulls:” others less excellent than that which

is deducted for *the son of the elder wife*, belong one each to those who are inferior; that is, who are inferior to the son of the elder wife, because they are sons of a younger. The seniority of the mother prevails over that of the son. The text supposes many inferior sons born of younger wives. "On account of their mothers;" in the order of their mother's *rank*. Consequently the son of the eldest wife shall take the most excellent bull; the son of the intermediate wife, a bull somewhat inferior to the first; the son of the third wife, one inferior to this also; and so forth. Thus should seniority be acknowledged according to the rank of the mother. But if the son of the elder wife be also elder than his brothers, the same lawgiver propounds a distinct rule:

LVI.

MENU :—A son, indeed, who was first born, and brought forth by the wife first married, may take, *if learned and virtuous*, one bull and fifteen cows; and the other sons may then take, each in right of his several mother: such is the fixed rule.

Kine amounting with the bull to the number of sixteen; that is, fifteen cows and one bull. "And the other sons may then take, each in right of his several mother;" neglecting the senior or junior rank of other brothers in right of age, let them take deducted allotments, according to their precedence as sons of the second, third, and fourth wives, and so forth. But this is mentioned by **MENU** as the opinion of others. His own opinion is, that the seniority of a son follows the order of birth; for the first-born benefits his father by delivering him from the hell named *put*, and by other services; the middlemost is also qualified to perform obsequies for his father, in preference to the third or younger son; and the law declares veneration due to them. However, should a priest espouse wives of various classes, and a son be first produced by the *Cshatriyâ* wife, and last by the *Brâhmanî*, the son of the *Brâhmanî* is nevertheless considered as the eldest. Intimating this, the legislator thus proceeds:

LVII.

LVII.

MENU :—As between sons born of wives equal in their class, *and without any other distinction*, there can be no seniority in right of the mother, the seniority ordained by law is according to the birth.

Since there is no distinction between sons born of wives equal in their class, (for there is in that case no difference arising from class;) there can be no seniority, as above mentioned, in right of the mother. But, if the wives be of various classes, since the sons are of the same tribe with their mother, it would be an unfit proceeding to regulate seniority by birth, whereby the *Cshatriya* and the rest might precede the *Bráhmaṇa*. In that case, therefore, seniority in right of the mother must be admitted; but in this, since the wives belong to the same class, the seniority of sons, who are *consequently* equal in class, must follow the order of birth. Such is the opinion delivered by the author of the *Pracáśa*.

But **CULLÚCABHATTA** thinks ‘both opinions are approved by
 ‘ **MENU**. Consequently, should the seniority of the mother, and
 ‘ superiority of class, be opposed to each other, an alternative
 ‘ must be allowed. As one precept of the *Vēda* directs, “take
 ‘ sixteen jars of rice and milk, in the sacrifice performed through the
 ‘ night, and called *atirātra* ;” and another precept of the *Vēda* di-
 ‘ rects, “do not take sixteen jars of rice and milk in the sacrifice
 ‘ called *atirātra* ;” and two precepts being thus contradictory, an
 ‘ alternative is allowed; so in this case also, a practical alternative
 ‘ must be accepted in this world. For example; if the son of
 ‘ the elder wife be virtuous, and the son of the younger, though
 ‘ first born, be deficient in virtue, then the son of the elder wife
 ‘ shall take the most excellent bull: but, if the eldest son, born
 ‘ of the younger wife, be virtuous, he shall take it. The alterna-
 ‘ tive must be therefore regulated by the good qualities of the sons.
 ‘ The allotment of an elder son’s portion, determined by the
 ‘ good qualities of the son, is noticed by **VRĪHASPATI** (XLV).
 ‘ Should the eldest by birth surpass the rest in science and the like,
 ‘ he

‘ he shall have the best deduction ; a single bull *is ordained* for
 ‘ one deficient in virtue ; a bull and fifteen cows for one mode-
 ‘ rately virtuous ; but this deduction depends on the seniority of
 ‘ the mother.’ According to this interpretation, it is evident
 that even an elder brother of the half-blood shall have a double
 share, if he surpasses the rest in virtue : MENU almost expressly de-
 clares, that other brothers, though born of different mothers,
 shall have a deducted allotment. Both commentators think these
 texts of MENU imply the admission of seniority in right of mo-
 thers, because he declares that the deductions for others besides
 the first-born shall be regulated by the rank of the mothers.
 That is liable to objection.

HELÁYUDHA expounds ‘ first-born (*pūrvaja*), born at an
 ‘ earlier time, senior in age, and so forth. The next excellent
 ‘ bulls, that is, others less excellent than the best, shall be duly
 ‘ distributed, one to each, among those who are inferior, (that
 ‘ is, younger in age than the first-born,) on account of their mo-
 ‘ thers, or in the order of precedence appertaining to their mo-
 ‘ thers.’ He thinks the right of the first-born to the portion of
 an elder brother can be established by reasoning, because he is
 more venerable than the son of the elder wife married to com-
 plete the father’s rites of initiation, since he benefits his father
 by delivering him from the hell called *put*, and by other services,
 and since he is qualified to perform his obsequies, competent to
 support the rest of the brethren, entitled to respect, and strict in
 his conduct. As in the case of two inconsistent texts of law,
 that prevails which can be justified by the best arguments* ; so,
 from parity of reasoning, in the case of contested inferences from
 the same law, the prevalence of one should be established by ar-
 gument. In mentioning the deducted allotment successively
 taken by sons in right of their several mothers, it is supposed
 that they are sons of mothers unequal in class, as is evident from
 the subsequent text (LVII). The verse which will be hereafter
 cited, (LX 2), must be considered as relating to the virtuous son
 of

* YA’JNYAWALCYA:—If two texts differ, reason, *or that which reason
 best supports*, must in practice prevail.

Expecting to find the text at large cited in this work, I have omitted to place
 and number this quotation. T.

of a *Bráhmēni* wife : and the preceding text (LV 2) must also relate to the son by a woman of the sacerdotal tribe.

The opinion delivered by the author of the *Pracāśa* seems preferable. The alternative supposed by CULLÚCABHATTA is liable to eight objections. To the opinion of HELÁYUDHA a single objection may be made ; since the rule of partition among sons produced by wives unequal in class will be delivered *by the legislator* in another place, it is wrong to suppose it implied in this. Let it not be said that he supposes the deducted allotment should be given to sons in right of their mothers, not in the order of their class, but in that in which the several mothers were espoused, since he has not expressly declared his meaning. Were it so, the claim in right of mothers being admitted on the grounds of the text, without argument, from reasoning, it would be proper to expound “ first-born ” (*pūrvaja*) son of the elder wife. Or the following must be *the sense of the text as expounded* by HELÁYUDHA ; the first-born, or he who delivers his father from the hell called *put*, shall take one excellent bull ; the next excellent bulls shall be distributed among the younger brothers “ on account of their mothers ; ” that is, according to the number of mothers, not according to the number of individual sons ; for it may coincide with the texts of VRĪHASPATI and GÓTAMA (LXII and LIX). This supposes an equal number of sons by each mother : or the deduction may be computed from the *number of mothers*, even though the number of sons be unequal, merely because it is so directed in a text of MENU.

LVIII.

GÓTAMA :—One bull shall be the additional portion of an eldest son *born of a wife last married but of equal class ; or, if* produced by the first-married wife, he shall have a bull and fifteen cows ; or the same deduction *which is granted to an elder son born of a wife last married*, shall be received by a younger son born of an elder wife.

On

On the exposition of CULLÚCABHATTA, the meaning of the text is obvious. It is thus expounded in the *Retnâcara*: ‘one bull shall be the deducted allotment of a son produced by a wife equal in class but not first married: it coincides with the text of MENU (LVIII). “Produced by the eldest wife, &c.” that is, an eldest son born of a first-married wife *shall have a bull and fifteen cows*: this coincides with another text of MENU (LVI). ‘If a younger son born of a first-married wife be virtuous, the Sage adds, “the same deduction shall be received by him;” that is, a deduction shall be received by a younger son born of a first-married wife, in the same mode in which a deduction is received by the eldest son born of a wife last married.’ The text of SANC’HA and LIC’HITA, already cited (XLIII), is also adduced in the case of partition among sons by several mothers. “Eldest son” intends him who delivers his father from the hell named *put*, as has been already remarked: and this allotment supposes both the eldest and the youngest to be endowed with good qualities.

LIX.

GÓTAMA:—A special partition may be made *among sons, by allotting one share to each of their several mothers, as shares are usually allotted to kinsmen.*

“As kinsmen;” as brethren. When there are four or five brothers, as one share is given to each brother—so, when there are many mothers, who have an equal number of sons, one share shall be allotted to each mother, because it is troublesome to divide the estate among the brothers. Afterwards, a special partition among uterine brothers shall be made by those sons, with the deducted allotment of a twentieth part and so forth, if all were equal in class.

The *Retnâcara*.

From the term ‘deducted allotment of a twentieth part,’ which occurs in the gloss, it should seem that the deduction of a twentieth part and the like must be allowed even in the case of partition among brothers of the half-blood; the allotment of a bull only must have been propounded by MENU and the rest, supposing

supposing the eldest to be deficient in good qualities. That, however, is questionable. This distribution, by the number of mothers, can only be adopted in the case of women belonging to the same class; for equal partition can only take place among their sons, and a different partition is ordained in the case of mothers unequal in class.

LX*.

MENU:—If there be four wives of a *Bráhma*na in the direct order of the classes, and sons be produced by them all, this is the rule of partition among them:

2. The chief servant in husbandry, the bull kept for impregnating cows, the riding horse or carriage, the *ring and other* ornaments, and the principal messuage, shall be deducted from the inheritance and given to the *Bráhma*na son, together with a larger share by way of pre-eminence.
3. Let the *Bráhma*na take three shares of the residue; the son of the *Cshatriyá* wife, two shares; the son of the *Vais'ya* wife, a share and a half; and the son of the *Súdra* wife may take one share.

“In the direct order of the classes:” so the term is explained by CULLÚCABHATTA. He holds marriages in the direct order of the classes to be legal.

LXI.

YÁJNYAWALCYA:—Three wives in the direct order of the classes, two, and one, *may be married by the Bráhma*na, *Cshatriyá, and Vais'ya*, respectively.

“In the direct order of the classes,” from which the girls sprung. “Respectively,” three may be married by the *Bráhma*na,

* Cited again at V. cxxxix.

mana, two by the *Cshatriyá*, and one by the *Vaisya*. As YÁJ-
NYAWALCYA does not approve the marriage of twice-born men
with girls of the servile class the number of "three," &c. is
correct. The possible equal rank of the *Cshatriyá* wife and the
rest, in the case of marriage contracted in the inverse order of
classes, because, though inferior in the order of classes to the
Bráhmēni, they precede her in the order of espousals, is impro-
per: as the son of a *Cshatriyá* wife, born before the son of the
Bráhmēni, has not the honours of primogeniture, so the *Cshatriyá*,
even though first married, cannot take precedence of the *Bráhmēni*
wife; for MENU, using the word 'solely' (Book IV, v. XLVI),
makes it evident that precedence shall not be settled according to
the order of their marriages, or the sequence of their ages.

"The chief servant in husbandry, and the bull," (namely, that
which is kept for impregnating cows,) the horse or other cattle
appertaining to the carriage, the ring and other ornaments, the
habitation or principal messuage, and one share, shall be given,
as a deducted allotment, by way of pre-eminence, to the *Bráh-
mana*, or son of the *Bráhmēni* wife: in the partition of the heri-
tage, he shall have three shares, as will be shown. Why is one
share mentioned as part of the deducted allotment, and three
shares again assigned? Why not say at once, that he shall have
four shares? The answer is, as in the case of sons belonging to
the same class equal dominion is attributed to all (IV), but a de-
duction of a twentieth part and so forth is allotted to the eldest
and the rest, as a mark of veneration for their good qualities, for
their birth and the like; so, in this case, it appears from the dis-
tribution ordained (LX 3), that such and such are the inherited
rights of the *Bráhmāna* and the rest, but a deducted allotment,
consisting of one *additional* share and so forth shall be given as a
mark of veneration for the mother's class. Consequently, as no
deduction of a twentieth is given when the younger brother does
not yield respect to his senior, (and such is the present practice,
but it is morally wrong, like the omission of divine worship,) so
likewise, if the *Cshatriya* and other sons do not yield respect to
the *Bráhmāna* son, they need not give that *additional* share, but
moral demerit is the consequence of their refusal. Let it not be
alleged, that the law propounding a deduction of a twentieth
part and so forth is therefore nugatory. Like the law which
propounds

propounds the specifick quantity of a *pūrnāpātra** and the like, this also is not unmeaning; for it is an explanatory precept. Should the youngest brother, through excess of piety, or through ignorance, allow a greater deduction than the twentieth part or the like, it is illegal; his son or other heir may therefore rescind that distribution: and the law is consequently not unmeaning. But the treble share of the son produced by the *Brāhmenī* wife and so forth must be given by the rest, however reluctant. CHANDÉSWARA thus expounds the text: 'when partition is made, let a larger portion, *consisting* of the treble share receivable by him, be given to the *Brāhmaṇa* son.' Hence, according to the *Retnācara*, the distribution cannot be made by allotting shares to each mother *for her sons*, in the case of mothers unequal in class. Why may not partition be nevertheless made by allotting three shares to the *Brāhmenī* wife for her sons, two to the *Cṣatriyā*, one and a half to the *Vaiśyā*, and one to the *Sudrā*? It cannot; for such a distribution, allotting shares to mothers for their sons, has not been mentioned by GÓTAMA and the rest. VRĪHASPATI renders this evident:

LII.

VRĪHASPATI:—If two or more sons were born of each mother, and they be equal in class and number, these brothers of the half-blood may legally divide the heritage, by allotting shares to their respective mothers *for the benefit of the sons*.

Hence brothers of the half-blood, born of different mothers, by the same father, may divide the heritage by making as many shares as there were mothers, provided they be equal in class, and in respect of the number of sons produced by each mother, and provided every mother have borne sons: and when the subdivision is made, every son receives an equal share. This has been ordained by VRĪHASPATI, to facilitate partition: there is no real difference. The text of GÓTAMA (LIX) intends this case alone; for the import coincides. May it not, therefore, be said that, in this text, "equal in class and number" is merely illustrative;

* Book II, Ch. III, Sect. II.

illustrative; and the distribution may, for that reason, be made according to the number of mothers, even in the case of unequal number of sons *by each mother*? Therefore does the same legislator subjoin the following text:

LXIII.

VRĪHASPATI:—Among brothers who are equal in class, but vary in regard to the number of sons produced by each mother, the shares of the heritage are allotted to the males, *not to their mothers*.

It being necessary to restrict the text of GÓTAMA, “equal class” should be argued as the limitation. It is remarked in the *Retnâcâra*, that the ‘text of VISHNU (LIV) should be adduced in the case of unequal number of sons produced by each mother.’ Here an observation should be made: if indeed the distribution by allotment of shares to mothers be ultimately a distribution of the heritage among the sons, and the partition be only made according to the number of mothers to facilitate the operation, such a distribution can only take place when all the sons are equally endowed with good qualities, not in a case where sons possess unequal degrees of virtue; for, were it so, the partition could not be well made with attention to the various deducted allotments: or the distribution according to the number of mothers, can only be made after setting apart the proper deductions. Let it not be argued, that, since the text of MENU, and that of VISHNU cited immediately after it, (LIII and LIV,) propound a deduction for the eldest alone, in the case of partition among brothers produced by different mothers, therefore no deduction shall be *set apart* for the rest. MENU has also suggested deductions for the rest, by saying, “the other sons may then take each in right of his several mother” (LVI). As it were attributing the virtues of the son, and his right of primogeniture and the like, to his mother, the deducted allotment may be so given. For example; to her who has two virtuous sons, and one deficient in good qualities, two degrees of virtue are attributed: in like manner,

ner, to her who bore the second, fifth, or seventh son, attributing such seniority, the deducted allotment may be so given.

The texts of MENU and VISHNU ought to be considered as applicable to the case of sons equally endowed with virtuous qualities; to which case another text of MENU (XXXVIII) also relates. Nor should the repetition be deemed a censurable *pleonasm*. Having ordained the allotment of their shares and so forth in the case of several wives taken from various classes, the mention of equal partition, to satisfy the doubt what should be done in the case of several wives taken out of the same class only, is pertinent: and seniority should be understood in the order of birth, in right of which one chattel is deducted, as above mentioned: that is consistent with the comment delivered in the *Retnâcara*. But LACSHMÎDHARA and the *Pârijâta* expound the word *pûrva*, in the text above cited (LV 2), son born of the elder wife; and they deem the text applicable to the case where the son of the elder wife is endowed with superior virtue, when compared with the eldest by birth. If the middlemost son, born of the elder wife, be alone virtuous, he alone should be considered as eldest. But, in fact, the first-born ought alone to be considered as eldest; for he alone is variously celebrated, as delivering his father from the hell named *put* and so forth. MENU declares this in express terms.

LXIV.

MENU :—The right of invoking INDRA, by the texts called *swabrâhmanyâ*, depends on actual priority of birth; and of twins also, if any such be conceived among different wives, the eldest is he who was first actually born.

A particular text, called *swabrâhmanyâ*, is used by *Ch'handôga* priests, in the *gyôtiṣṭôma* sacrifice, for the invocation of INDRA. That single text, considered as many from the various modes of using it, is mentioned in the plural number. Under the authority of a positive precept, the invocation of INDRA, with a view to the invoker's father, can only be pronounced by the first son.

As seniority is intended in the phrase "let the father of such a one perform the sacrifice," and as seniority is *suggested* in the *lâf sūtra**, (since the text expresses "among males and females, those who survive, &c."), therefore seniority is attributed to the eldest survivor: it is not required that he should be the son of the first-married wife; for, were that required, it would be nugatory to consider the eldest survivor.

LXV.

DÉVALA:—In low classes, *the precedence of sons is regulated* by the goodness of their disposition; and of twins, *the eldest is he* who is first actually born.
 2. Among twins, to him, whose face *kinsmen* first see after his birth, belong *the privileges of male offspring, the right of performing obsequies* for his father, and *the honours of primogeniture*.

"Who is first actually born;" who first touches the earth. "Of twins also" (LXIV), though conceived in the womb at the same instant, "the eldest is he who was first actually born;" that is, who first touched the earth. Should it be unascertained which of them first touched the earth, what shall be the rule? DÉVALA also provides for this case (LXV 2). "Whose face kinsmen or parents first see:" the verb is in the plural number, because many, not the father and mother only, are meant. "Male offspring;" the performance of duties incumbent on male offspring, and relief *afforded to the father* from the evil of wanting male issue: that should be acknowledged to belong to him; else there would be no certainty to whom the portion of an eldest son ought to be given. "For his father;" this son is chiefly qualified to perform those duties towards his father, which must be performed by one alone, such as obsequies and the like. "The honours of primogeniture;" the right of invoking INDRA in the *jjôtishī ōma* sacrifice and so forth, and the right of taking the

* The allusion has not been explained to me; it does, I believe, relate to a text of the *Vêda*. T.

the portion of an eldest son and the like : that belongs to him alone. “ Among twins ;” the dual is here indeterminate : the same rule is applicable to the case of three or more sons produced at one birth.

“ In low classes ” (LXV) ; in servile tribes : by the term expressed in the plural number, mixed classes, which adopt the duties of the servile tribe, are comprehended *in the text*. Among these, precedence or seniority is regulated by conduct and good disposition : and that is similar to seniority in right of *science and virtue* ; for ‘*Súdras* are not qualified to study the sacred sciences. But VÁCHESPATI holds, that ‘*Súdras* have no *additional* portion in right of seniority by birth.

LXVI.

MENU :—For a ‘*Súdra* is ordained a wife of his own class, and no other : all produced by her shall have equal shares, though she have a hundred sons.

From the words “ equal shares ” he infers, that no deduction shall be made in right of promogeniture ; but the deducted allotment on account of good qualities, as mentioned by VRĪHASPATI, may be allowed, since the text has a general import.

LXVII.

VRĪHASPATI :— Of those sons, he who is endowed with science and good qualities, is entitled to receive a greater portion.

But ‘SRÍ CRĪSHNA TERCÁLANCÁRA says, ‘ this text (LXVI) has been propounded by MENU, as an answer to those who doubt what should be the distribution among ‘*Súdras*, because they find a special distribution ordained among *Bráhmanas* and other sons produced by wives unequal in class : for ‘*Súdras*, wives of one class only have been ordained ; their sons shall have equal shares. The deducted allotment in right of seniority,

‘ such as prior birth, is not denied ; for the import of the text is
 ‘ evident from the phrase, “ no other wife is ordained ;” and a
 ‘ deducted allotment is not a share.’ According to all opinions,
 it must be established, that seniority in right of prior birth is ad-
 missible, even among *Súdras*, so far as it concerns religious rites.
 If the eldest be transcendently virtuous, and the rest be deficient
 in virtue, the first-born shall have two shares, as ordained in the
 rule of GÓTAMA above quoted (LI). But if all be equally
 virtuous, GÓTAMA propounds another distribution.

LXVIII.

GÓTAMA :—Or the first-born shall first choose and
 take any one chattel and ten head of cattle, *and*
the rest shall successively make a similar selection.

Any one chattel which may please him. For instance: the
 eldest first takes any one chattel at his choice, and ten head of
 cattle ; out of the residue, the second son chooses one chattel
 and ten beasts ; the third son *likewise* selects one article and ten
 head of cattle, and so forth. Here the first choice allowed to the
 first-born, is a mark of veneration. But CHANDÉSWARA re-
 marks, that ‘ the cattle must be of the same kind.’ Yet, if that
 cannot be, the selection must be made in any practical mode.
 The same legislator excepts certain animals.

LXIX.

GÓTAMA ;—*But he shall not take ten head of beasts*
which have uncloven hoofs, nor of slaves.

“ Beasts which have uncloven hoofs ;” horses and the rest.
 “ Bipeds ;” slaves and the like. That he shall not take ten of
 these, is inferred from what preceded. It appears from a text
 of MENU, that sons do not each take ten goats and sheep.

LXX.

LXX.

MENU:—Let them never divide *the value of a single* goat or sheep, or a *single* beast with uncloven hoofs: a *single* goat or sheep *remaining after an equal distribution*, belongs to the first-born!

Shall they, or shall they not, be taken by the eldest? To this question the answer is, if the eldest be entitled to the deduction of a tenth or twentieth part, under other texts, in that case only is *equal partition* prevented: the goats and sheep may be taken by the eldest; but in this case, which concerns the equal deduction of a fixed number, since the rest of the brethren are forbidden to take ten sheep and goats, the eldest also has no such right. But CULLÚCABHATTA considers this text as relating to partition. For example: five brothers inherit four goats; in that case one goat cannot be allotted to each of them, because the number is less. The pecuniary value, or other property taken as the equivalent, ought therefore to be distributed: but MENU forbids that. What then shall be done? MENU replies, “they belong to the eldest alone;” that is, they shall be given to the eldest alone.

Much various discussion occurs on this point. The text falls within the consideration of the portion allotted to the eldest son, and cannot relate to subsequent distribution. Again; that the sheep and goats should be given to the eldest, has been already mentioned: but what is the rule in respect of beasts which have uncloven hoofs? If the words “sheep and goats” are merely illustrative, that term (beast which has uncloven hoofs) is nugatory. Since the text may coincide with that of GÓTAMA, and forbid the taking of certain cattle as the portion of an eldest son, it is a reproach *to this exposition*, that it abandons that coincidence to establish an independent rule.

LXXI.

NÁREDA:—To the eldest a greater share shall be given; a worse share is ordained for the youngest;

the rest shall have equal allotments, and an unmarried sister *shall* also have a portion.

2. The same *distribution* is ordained among sons legally begotten on the wife of a kinsman.

Some lawyers consider this text as relating to the partition of a small property among brothers, most of whom are equally endowed with good qualities, but the youngest somewhat inferior *to the rest* in virtue: since a deduction, such as one chattel, cannot be given, greater veneration shall be evinced by giving the best share *to the eldest*; and since the youngest is inferior by reason of his deficiency in virtue, the worst share shall be given to him. But CHANDÉSWARA thus conceives the text: ‘an additional share, or one besides that in which he will be entitled in the general distribution, shall be given *to the eldest*, in right of primogeniture; less than that, three quarters, half, or a quarter of it, shall be given to the youngest, if he be virtuous, in proportion to the degree of virtue.’ The rest, namely the intermediate sons, shall have equal shares. They have a right to an equal allotment; that is, they have the succession or ownership of a single share, without an additional portion on account of virtue. An unmarried sister shall have a portion, not an equal share; for equal participation of sisters will be forbidden. Or the sense may be, she shall have an equal *or exact* share, that is, her due allotment without an additional portion; as the phrase “there shall be an equal division of that property” (LXXIII) *signifies that no deducted allotment shall be given*: her due share will be subsequently mentioned, as amounting to a fourth part of a brother’s share.

The author of the *Pracāsa* reads ‘*Srēṣṭhāya cha vara*, and a better portion to the most excellent brother; instead of *Canisṭhāyāvara*, a worse portion to the youngest. He thus expounds that reading: ‘a double share shall be given to the first born; and the most excellent brother, employed in *managing* the affairs of the family, shall have a better portion; he shall have something most excellent.’

Extending to sons begotten on a wife by a kinsman what has been ordained in respect of sons begotten in lawful wedlock, the lawgiver adds, “the same distribution, &c.” (LXXI 2): in respect

spect of the sons of the wife legally begotten, the rule is the same with that respecting the son begotten in lawful wedlock. Consequently, whatever rules relative to the portion of an eldest son and the rest have been propounded in respect of the son of the body, the same rules should, if possible, be also admitted in the case of sons of the wife. "Legally begotten;" if an eunuch, or other impotent person, give his own wife to another man of the same family, or at least of the same class, for the sake of obtaining offspring, and issue be procreated by him approaching her sprinkled with clarified butter and so forth, agreeably to the form of fulfilling the appointment, then only is the son of the wife legally begotten. How then can one adoptive father have two or more sons begotten on his wife by a kinsman? CHANDÉSWARA replies; 'this supposes the birth of twins.' The meaning therefore is, that two or more sons have been produced *at one birth*, although the procreation of one alone were designed.

This concerns one eldest by birth, science and virtue; (XLV). "Birth;" prior birth. "Science;" such science as is not blameable in his class. Endowed with these, and with virtue, he is *venerable* like their father: this reason is assigned for his double portion. The rest, namely the younger brothers, being deficient in virtue, and unlearned, *shall share alike*. The text of GÓTAMA (LI) concerns the same case.

LXXII.

USANAS:—This partition is ordained among sons born in the direct order of the classes; but partition among brothers of the same class is regulated by equal shares.

The first hemistich alludes to partition among sons produced by wives of various tribes. "In the direct order of the classes;" sons inferior in class to their father. But partition among sons of one and the same tribe is regulated by equal shares. Thus some lawyers expound the text.

And this equal participation supposes all the sons to be equal *to each other*, because they are deficient in virtue; or it regards
sons

sons who have acquired wealth by various modes of labour, though one of them may surpass the rest in good qualities.

The *Retnâcara*.

In the first case, *equal partition shall be made* after giving an excellent chattel as the deducted allotment in right of primogeniture; or it supposes the eldest brother to be guilty of some offence, such as defrauding his younger brothers, or the like. The last case is strictly accurate.

LXXIII.

MENU:—And if all of them, being unlearned, acquire property *before partition* by their own labour, there shall be an equal division of that property *without regard to the first-born*, for it was not the wealth of their father: this rule is clearly settled.

“Unlearned” is merely an instance: the rule is the same if they be learned. CULLÚCABHATTA observes, ‘when property is acquired in agriculture, commerce or the like, by the exertion of all the brothers, being unlearned; then, since that was not acquired by their father, but by themselves, an equal division shall be made, and no deducted allotment shall be given. This relates to property acquired without the co-operation of their father; a former text (XXIX) relates to property acquired with his co-operation: there is no vain repetition.’

LXXIV.

YÁJNYAWALCYA:—Should joint-property be improved by the exertion of one parcener, equal partition is nevertheless ordained.

This is an exception to the text of VAŚISHT’HA.

LXXV.

LXXV.

VASÍSHT'HA :—Among these parceners, he by whom property is acquired through his own sole labour, shall take a double share of it*.

If the common property be improved by agriculture, or commerce, or the like, through the exertion of any one parcener, equal partition is nevertheless ordained ; a double share shall not be assigned to him by whom it has been improved. But the text of VASÍSHT'HA must be considered as applicable to a different case.

The *Retnácara*.

When the common property is improved by agriculture, commerce, or the like, equal partition is made : more is not given to one parcener, in proportion to the greater acquisition obtained through his labour ; for it coincides with the text of MENU (LXXIII).

The *Dípacalicá*.

In fact, “equal” signifies, without the deducted allotment given in right of seniority ; *such shall be the partition*, in the case of property acquired by the joint exertion of brothers. Again ; it is inferred from the tenor of this text, that the portion of an elder brother, though not *expressly* ordained by YÁJNYAWALCYA, is allowed even in the case of partition among brothers ; (*else it would be superfluous to forbid it in this particular instance.*) Accordingly VÁCHESPATI MISRA observes, ‘if any one parcener, by agriculture, commerce, or the like, improve the common property, still he shall not have a greater portion of it ;’ but this *is only true* when the rest have likewise done so by the use of common property, else it would contradict the text of VASÍSHT'HA.

LXXVI.

MENU :—Should a younger brother, *in the manner before mentioned*, have begotten a son on the wife of his *deceased* elder brother, the division must then be

* Cited again at V. cxxxviii, and at V. cclvi.

be made equally *between that son who represents the deceased, and his natural father*: thus is the law settled.

2. The representative is not *so far* wholly substituted by law in the place of the *deceased* principal *as to have the portion of an elder son*, and the principal became a father in consequence of the procreation *by his younger brother*; the son, therefore, is entitled by law to an equal share, *but not to a double portion*.

If a younger brother, in consequence of a legal appointment, beget a son on the wife of his elder brother, then an equal partition shall be made between that son of the wife and his *adoptive uncle or natural father*; he shall not, like his *adoptive* father, take the deduction of a twentieth. Such is the settled rule of partition: but a son so begotten without a legal appointment, is excluded from inheritance; as will be mentioned. Although it be said, "his uterine brothers and sisters shall assemble and divide equally the share of the deceased" (MENU, Chap. IX, v. 212), still, as the grandson, whose father has deceased, succeeds to his share in the paternal grandfather's estate, it should appear from this reason, that the son begotten on the wife of the eldest brother would be entitled to a deducted allotment besides the equable share, because he is *considered as the son of the eldest brother*; removing this doubt, the lawgiver (LXXVI 2) confirms what had been already mentioned. "The representative," the substitute, or son begotten on the wife, has no connexion with the title of the principal, the husband of that wife, his *adoptive* father, whereby he would have taken a deducted allotment besides his equable share. The principal, though husband of that wife, became a father in consequence of the procreation *by his brother* on his wife: therefore the younger brother is entitled, by the preceding law concerning the rule of partition, to an equal division with the son begotten on the wife. The last verse must be thus supplied from the preceding. CULLÚCABHATTA.

But some lawyers thus expound the text: if the younger brother legally procreate a son on the wife of his eldest brother,

then the division must be made equally, whether the partition be undertaken between those brothers, or between the uncle and nephew: no deduction of a twentieth is allowed in this case. The legislator subjoins the cause (LXXVI 2): for the substitution, or procreation of a representative, has been legally effected by such younger brother thereby become principal. How can the younger brother become the principal? Therefore does the Sage add; in the production of offspring, the youngest brother was the father or procreator. Consequently, because the younger brother perpetuates the race, therefore he is principal; and for that cause he is entitled to an equal share: no deducted allotment shall be taken.

‘ These texts,’ say some authors, ‘ ordaining the portion of
 ‘ an eldest son, should be applied to partition by a father, to
 ‘ partition among uterine brothers, and to that among brothers
 ‘ born of different mothers, according to circumstances; else
 ‘ the questions which arise on such cases are not satisfied.
 ‘ Texts which contain a term descriptive of the person who
 ‘ makes the distribution, merely elucidate the mode of it. How-
 ‘ ever, the texts of such Sages as have propounded special limita-
 ‘ tions, must be considered as special rules, *or exceptions*.’
 That opinion is unauthorized by ancient authors; for VÁ-
 CHESPATI BHATTÁCHÁRYA declares three texts applicable to
 partition by a father, and two texts of MENU with one of BAUD-
 HAYANA exclusively applicable to the case of partition among
 brothers of the half-blood: and CHANDÉSWARA, premising
 partition during the life of the father, cites four texts *under that*
head, and cites nearly *all* the rest in cases of partition among
 uterine brothers and sons of different mothers; but VÁCHESPATI
 MISRA and the rest have said nothing expressly on this point.

It should be here noticed, that, at this time, in our country, the practice of deducting a twentieth part or the like is almost wholly disused; but some chattel of small value is given to the eldest as a token of veneration.

END OF THE SECOND VOLUME.

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